

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Applications of Cricket License Company, LLC,)	
<i>et al.</i> , Leap Wireless International, Inc., and)	
AT&T Inc. for Consent To Transfer Control of)	WT Docket No. 13-193
Authorizations)	
)	
Application of Cricket License Company, LLC)	
And Leap Licenseco Inc. for Consent to)	
Assignment of Authorization)	

**JOINT OPPOSITION OF AT&T INC. AND LEAP WIRELESS INTERNATIONAL, INC.
TO PETITIONS TO DENY AND CONDITION AND REPLY TO COMMENTS**

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EXECUTIVE SUMMARY

This transaction will benefit customers of both Leap and AT&T and enhance competition. As explained in Applicants' Public Interest Statement, combining Leap's established Cricket brand, customer base, distribution network, and experience selling prepaid/no-contract service, with AT&T's nationwide 4G LTE/HSPA+ network, suite of advanced devices and services, and financial resources will bring consumers a compelling new nationwide, more spectrally efficient, facilities-based alternative for a full range of prepaid/no-contract services. AT&T will put Leap's spectrum to more efficient use in AT&T's 4G LTE network, and the combination of complementary assets will result in significant cost savings and other synergies. Customers of both companies will enjoy an improved network experience, and Leap's customers will gain access to a more robust national network and a broader array of service and handset options. These benefits are largely unchallenged by the few parties that urge the Commission to deny or condition the proposed transfer of control ("Opponents"), and for good reason: the Commission acknowledged in its *T-Mobile/MetroPCS Order* the public interest benefits flowing from a national wireless provider's acquisition and expansion of a regional value brand with a limited footprint and declining prospects.

Despite Opponents' claims to the contrary, these unquestioned public interest benefits can be obtained without competitive harm. Leap has a limited facilities-based footprint, serves less than two percent of wireless customers today, has experienced a significant drop in subscribers since March 31, 2012, and simply does not constrain AT&T and the other national carriers – as both the Department of Justice and the Commission Staff previously concluded. The transaction does not trigger the Commission's spectrum screen for further analysis in the

vast majority of affected CMAs, and in the very few CMAs where it does, ample spectrum remains available to (and, indeed, is held by) AT&T's competitors. Nor will the combination have any adverse local impact: all four national carriers will continue to compete vigorously, including in the South Texas and California areas that a few Opponents highlight.

Opponents offer no serious challenge to any of these showings. Instead they ask the Commission to repudiate many of its longstanding precedents, including those that were reaffirmed just last spring. They tout Leap's competitive significance even though the Commission Staff and Department of Justice previously rejected the characterizations they advance, and even though Leap's performance has since declined significantly. They urge the Commission to adopt a product market definition that was rejected in the *T-Mobile/MetroPCS Order* without presenting any evidence of changed conditions that could warrant such a prompt reversal. And even applying their own incorrect market definition, they can offer no coherent theory of competitive harm. They also claim that the loss of Leap as a roaming partner requires special data roaming conditions, although, in fact, Leap is an insignificant provider of roaming services. The Commission has repeatedly rejected such requests where, as here, numerous roaming options will remain and the Commission's rules already mandate commercially reasonable data roaming rates and terms.

As has become routine practice, some Opponents also ask the Commission to inject into this proceeding issues that are beyond its proper scope. For example, several Opponents ask the Commission to change its spectrum aggregation rules radically, from a screen to one or more variants of a hard cap (and to freeze consideration of this proceeding pending completion of the Mobile Spectrum Holdings rulemaking). The Commission has repeatedly rejected such

proposals. Still other Opponents improperly seek to use this proceeding to improve their contractual positions or to gain leverage in unrelated disputes. None of these claims establishes any relevant, merger-specific harm to competition or consumers.

In short, this transaction is in the public interest and should be approved promptly and without conditions. Consumers will see the substantial benefits of the transaction quickly: AT&T can begin deploying Leap's unused spectrum as soon as 60-90 days from closing, plans to complete the customer migration to AT&T's network within 18 months, and plans to expand the Cricket brand aggressively nationwide. AT&T has made clear it will honor the existing plan of each Leap customer as of the close of the merger, provided the customer does not suspend or terminate his or her service for that plan, or choose to upgrade to a device or plan that is not comparable to his or her current device or plan. And AT&T will continue to offer all customers competitive rate plans that appeal to value-conscious customers, including the option of choosing low-cost devices and low-cost services. Indeed, for a period of 18 months after closing, AT&T intends to offer a \$40 per month (including taxes and fees) prepaid plan featuring unlimited talk, text and data and no roaming charges. These benefits will flow to consumers across the country, including low-income and minority consumers, both inside and outside the current Leap footprint, and stimulate greater competition for prepaid/no-contract services.

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I. INTRODUCTION

AT&T Inc. (“AT&T”) and Leap Wireless International, Inc. (“Leap”) (jointly, “Applicants”) demonstrated in their Public Interest Statement and August 20, 2013 Letter¹ that customers of both Leap and AT&T will benefit from the proposed transaction and that competition will be enhanced. The few parties participating in this proceeding (“Opponents”) present no meaningful challenge to this showing.² Indeed, the benefits here are very similar to

¹ Description of Transaction, Public Interest Showing and Related Demonstrations (filed Aug. 1, 2013) (“Public Interest Statement”); Letter of AT&T Inc. and Leap Wireless International, Inc. (filed Aug. 20, 2013, corrected Aug. 26, 2013) (“August 20, 2013 Letter”).

² *See generally* Petition to Deny of Broadvox-CLEC, LLC (filed Sept. 27, 2013) (“Broadvox Petition”); Petition to Deny of Competitive Carriers Association (filed Sept. 27, 2013) (“CCA Petition”); Petition to Deny of the Greenlining Institute (filed Sept. 27, 2013) (“Greenlining Petition”); Petition to Condition Consent of Applications of Infrastructure Networks, Inc. (filed Sept. 27, 2013) (“Infrastructure Petition”); Petition to Deny or Condition of NTCH, Inc. (filed Sept. 27, 2103) (“NTCH Petition”); Petition to Deny of Public Knowledge, Consumer Action, and Writers Guild of America, West (filed Sept. 27, 2013) (“Public Knowledge Petition”);

Footnote continued on next page

those the Wireless Telecommunications and International Bureaus credited just last spring in approving the acquisition of another prepaid provider, MetroPCS, by another national carrier, T-Mobile. Opponents ask the Commission to depart from this precedent, but they present no plausible basis for doing so, much less facts showing transaction-specific harms. Accordingly, the Commission should deny Opponents' requests and grant the Applications expeditiously without conditions.

II. THE TRANSACTION WILL SERVE THE PUBLIC INTEREST

Opponents have provided no evidence challenging Applicants' demonstration of the public interest benefits that will flow from this transaction.

- The transaction will lead to expanded and improved choices for consumers and increased competition, including nationwide availability of the Cricket-branded prepaid/no-contract value offerings using AT&T's 4G network.³ Leap has an established Cricket brand, customer base, distribution network, and experience in selling prepaid service. AT&T has a nationwide 4G LTE/HSPA+ network, advanced devices and services, and financial resources. Combining these complementary assets will allow the combined company to quickly bring consumers nationwide a higher-quality, more robust, and competitive prepaid offering, including value offerings for those seeking low-cost services.⁴
- The transaction will put Leap's spectrum, a significant amount of which is currently undeployed, to more efficient use in AT&T's 4G LTE network. AT&T's deployment of this spectrum will expand network capacity, provide customers of both companies with an improved network experience, and further strengthen the combined company's competitive prepaid offering.⁵ AT&T's plans to integrate Leap's highly

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Comments of the Rural Wireless Association, Inc. (filed Sept. 27, 2013) ("RWA Comments"); Petition to Deny of David K. Smith (filed Sept. 27, 2013) ("Smith Petition"); Petition to Deny of Youghiogheny Communications, LLC (filed Sept. 27, 2013). ("Youghiogheny Petition").

³ Public Interest Statement at 5-7; Declaration of Rick L. Moore, Senior Vice President, Corporate Development, AT&T Inc., ¶¶ 13, 15-18 (Aug. 1, 2013) ("Moore Decl.").

⁴ Public Interest Statement at 12-13.

⁵ *Id.* at 17-18; Declaration of William Hogg, Senior Vice President, Network Planning and Engineering, AT&T Services, Inc., ¶¶ 11, 12 (Aug. 1, 2013) ("Hogg Decl.").

complementary spectrum into AT&T's LTE network quickly and efficiently will advance the Administration's and Commission's goals, as well as benefit the public interest.⁶

- The transaction will result in significant savings in network and operating costs, as well as other synergies.⁷

On a similar set of facts to those in this transaction, the Wireless Telecommunications and International Bureaus recently concluded that the T-Mobile/MetroPCS merger would result in precisely these types of public interest benefits by permitting T-Mobile to take MetroPCS's established brand and offer it nationwide with an improved network.⁸ The Bureaus recognized T-Mobile's plan to continue the "business model, brand, and distribution channels post-merger" and that "[e]xisting MetroPCS customers would have access to a more robust, national network and a broader array of service and handset options."⁹ Moreover, "[c]onsumers outside of MetroPCS's current limited service area will have the benefit of the MetroPCS service plans becoming available as an additional option."¹⁰ The Bureaus concluded the benefits were

⁶ Public Interest Statement at 13-18; Hogg Decl. ¶¶ 7-12; August 20, 2013 Letter at 5, Exhibit 4 (providing preliminary list of approximately 50 CMAs for which AT&T can deploy spectrum within 60 to 90 days after the close of the transaction), Exhibit 5 (providing preliminary list of approximately 160 CMAs for which AT&T can deploy spectrum within 12 months after the close of the transaction).

⁷ Public Interest Statement at 19-20; Moore Decl. ¶¶ 20-24; Declaration of Dr. Mark Israel, Executive Vice President, Compass Lexecon, ¶¶ 69-76 (Aug. 1, 2013) ("Israel Decl.").

⁸ *Applications of Deutsche Telekom AG, T-Mobile USA, Inc., & MetroPCS Commc'ns, Inc., for Consent to Transfer of Control of Licenses & Authorizations*, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 2322, 2348 ¶ 74 (2013) ("*T-Mobile/MetroPCS Order*") (approving T-Mobile/MetroPCS transfer of control applications without accepting voluntary commitments from applicants or imposing any conditions).

⁹ *Id.* at 2343-45, 2348 ¶¶ 61-64 & 74. Indeed, the Commission has repeatedly held that increasing the diversity and range of features and services available to customers is in the public interest and should do so again here. *See* Public Interest Statement at 9 n.29 (citing decisions).

¹⁰ *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2348 ¶ 74.

“feasible and likely to be put into effect soon after the proposed transaction is concluded” and that the “public interest benefits may significantly enhance the competitiveness of Newco . . . [beyond what] T-Mobile USA could achieve alone.”¹¹ These predictions have already proven correct: T-Mobile is rapidly expanding MetroPCS’s offerings, has doubled its service area in just a few months, and is competing aggressively to acquire Cricket customers.¹²

This transaction offers the very same types of public interest benefits.¹³ Just as the T-Mobile/MetroPCS merger facilitated the expansion of MetroPCS’s competitive presence, including into Leap’s service area, so too will AT&T’s acquisition of Leap enable rapid expansion of Cricket’s branded services into MetroPCS’s historic territories and elsewhere. And just as the Commission found that expanding MetroPCS’s footprint would “enhance competition and provide important benefits for consumers,” Cricket’s expansion will enable it to deliver more choices for value-conscious customers and greater competition for providers of prepaid/no-

¹¹ *Id.*

¹² T-Mobile has expanded MetroPCS to 15 new metropolitan areas, and covers more than 157 million people since the closing of the merger. Scott Moritz, *T-Mobile Adds 15 MetroPCS Cities to Vie With AT&T, Leap*, Bloomberg (July 25, 2013), <http://www.bloomberg.com/news/2013-07-25/t-mobile-adds-15-metropcs-cities-to-vie-with-at-t-leap.html>; *see also* Press Release, T-Mobile, MetroPCS Takes on New Markets: Doubles Reach in Less than Three Months (July 25, 2013), <http://newsroom.t-mobile.com/phoenix.zhtml?c=251624&p=irol-newsarticle&ID=1841246>. *See also* Section III.C., *infra*.

¹³ In addition, the transaction undisputedly will result in significant savings in network and operating costs. Public Interest Statement at 19-20; Moore Decl. ¶¶ 20-24. Greenlining nonetheless suggests that AT&T will not pass these cost savings to consumers and asks for a condition on the merger to require AT&T “to pass the economic benefits of the transaction through to consumers.” Greenlining Petition at 19. But “[t]here is no economic justification for . . . imposing such a condition,” and “no regulatory condition on pass-through of cost savings is required in order for consumers to benefit from those reductions,” as Dr. Israel explains. Reply Declaration of Dr. Mark Israel, Executive Vice President, Compass Lexecon, ¶ 8 (Oct. 7, 2013) (“Israel Reply Decl.”).

contract services.¹⁴ Moreover, as the Bureaus found in the *T-Mobile/MetroPCS Order*, such a competitor will force other providers to respond, further intensifying competition overall and providing consumers even greater benefits.¹⁵

The benefits of this transaction will be available to all consumers, including low-income and minority consumers. As Opponents recognize, many Leap customers rely on their mobile handsets as a primary phone,¹⁶ and many minority and low-income consumers rely on their

¹⁴ Compare Public Interest Statement at 7-10, with *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2348 ¶ 74. Indeed, Greenlining's claim that Leap customers could obtain the benefits of AT&T's services and devices "simply by switching to AT&T," Greenlining Petition at 18, misses the substantial, transaction-specific benefits that accrue to customers from combining Leap's established Cricket brand, customer base, distribution network, and experience selling these prepaid/no-contract services, with AT&T's nationwide 4G LTE/HSPA+ network, suite of advanced devices and services, and financial resources. This combination of highly complementary assets will bring consumers a compelling new nationwide, more spectrally efficient, facilities-based alternative for a full range of prepaid/no-contract services. See Public Interest Statement at 13-17; Israel Reply Decl. ¶ 7. "Although it is true that Cricket subscribers could switch today, only post-merger would they be able to choose the combination of Cricket's brand and distribution network, AT&T's devices and plans, and the superior AT&T nationwide LTE network (which will be improved further by the proposed merger)." *Id.* To that end, "[t]o claim that this is not a benefit because consumers could switch to AT&T today is to claim that consumer-firm relationships, as well as the Cricket brand, distribution network, and services, have no value." *Id.* Moreover, in the *T-Mobile/MetroPCS Order*, the Wireless Telecommunications and International Bureaus concluded that expanded access to devices and services on a broader national network was a transaction-specific public interest benefit of that combination. *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2348 ¶ 74. Cricket customers will have "a clear consumer benefit" from the expanded access on AT&T's network with the improved network experience made possible by the transaction. Israel Reply Decl. ¶ 7.

¹⁵ *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2348 ¶ 74.

¹⁶ See Greenlining Petition at 13 (citing Leap, Cell Phone Customers, Cricket Wireless Usage by the Numbers, <http://www.leapwireless.com/brands/cell-phone-customers> (last visited Oct. 3, 2013) (stating that "[a]pproximately 65% of [Leap] customers use Cricket as their only phone" and "[m]ore than 90% of [Leap] customers use Cricket Wireless as their primary phone"))).

mobile handsets as a primary means of accessing the Internet.¹⁷ This transaction will benefit those consumers by providing them access to a more reliable, higher quality 4G nationwide network.

Moreover, contrary to some Opponents' claims,¹⁸ AT&T plans to serve consumers across a broad economic spectrum and compete vigorously for prepaid/no-contract customers. AT&T recently launched the flanker brand Aio Wireless ("Aio") specifically to serve prepaid/no-contract customers more effectively. Still in its infancy, Aio offers a basic prepaid rate plan that includes unlimited talk, text and data for \$40 per month (including all taxes and fees).¹⁹ This plan is aimed squarely at customers seeking low-cost service options. By expanding the Cricket brand – which is well-known in its footprint as a provider of attractive, low-cost offerings – this transaction will accelerate and facilitate AT&T's ability to serve those customers across the country.

As an example of AT&T's plans to compete vigorously for prepaid/no-contract customers across a broad economic spectrum, AT&T recently agreed to certain commitments that had been requested by Commissioner Sandoval of the California Public Utilities Commission. In

¹⁷ See Mary Madden, Pew Internet & American Life Project, Pew Research Center, *Technology Use by Different Income Groups* at 7-8 (May 29, 2013), available at <http://www.pewinternet.org/Presentations/2013/May/Technology-use-by-different-income-groups.aspx> (noting that 43 percent of cell Internet users making less than \$30,000 a year and 36 percent of cell Internet users making \$30,000 to \$50,000 a year do *most* of their online browsing via their phones); Lee Rainie, Pew Internet & American Life Project, Pew Research Center, *Use of Digital Technology by Different Income Groups* at 8 (Feb. 22, 2013), available at <http://www.pewinternet.org/Presentations/2013/Feb/Use-of-digital-technology-by-different-income-groups.aspx> ("Half (51%) of African-American cell internet users do most of their online browsing on their phone, double the proportion for whites (24%). Two in five Latino cell internet users (42%) also fall into the 'cell-mostly' category.").

¹⁸ Greenlining Petition at 10-12; Smith Petition at 9-11.

¹⁹ See Aio Wireless, No Annual Contract Rate Plans, available at: <http://www.aiowireless.com/shop/plans.html> (last visited Oct. 3, 2013).

particular, AT&T has agreed that, for a period of 18 months after closing, Cricket will offer a \$40 per month (including all taxes and fees) prepaid plan featuring unlimited talk, text and data and no roaming charges to new and existing customers in California.²⁰ To further demonstrate its commitment to competing vigorously for prepaid/no-contract customers, AT&T intends to offer the same \$40 per month prepaid plan not just in California, but wherever the Cricket brand is available nationwide during the same 18-month period.

Opponents also wrongly question the sufficiency of AT&T's preliminary plans for transitioning Leap's customers.²¹ In fact, as AT&T has shown, its preliminary migration plans²² are substantially similar to those approved in the *T-Mobile/MetroPCS Order*. For example, AT&T has stated that it will:

- Complete customer transition to AT&T's network within 18 months of the proposed transaction's close;²³
- Honor the existing rate plan of each Leap customer as of merger close, provided that the customer does not suspend or terminate his or her service for that plan, or choose to upgrade to a device or plan that is not comparable to his or her current device or plan;²⁴

²⁰ Letter from J. David Tate, General Attorney & Associate General Counsel, AT&T, to Ryan Dulin, Director, Communications Division, California Public Utilities Commission, re Notice by AT&T Inc. of Proposed Indirect Transfer of Control of Cricket Communications, Inc. (U-3076-C) at 6 (Oct. 8, 2013).

²¹ Greenlining Petition at 13-14; Public Knowledge Petition at 17-19; Smith Petition at 11; Youghioghenny Petition at 22-24.

²² As AT&T has stated previously, its integration plans at this time are necessarily preliminary and, as such, remain subject to change. August 20, 2013 Letter at 2.

²³ Public Interest Statement at 16.

²⁴ August 20, 2013 Letter at 2.

- Offer all customers competitive rate plans that will appeal to value-conscious customers, including the option of choosing low-cost devices and services;²⁵
- Offer Leap customers a superior array of devices, including the iPhone 5, the Samsung Galaxy Express, the Nokia Lumia 620, and other smartphones and feature phones from which they can choose;²⁶
- Formulate and fund offers designed to encourage Leap customers to migrate to AT&T's network to the extent customers do not migrate naturally on their own;²⁷ and
- Continue to give Leap customers in-store access to third-party financing opportunities.²⁸

In addition, AT&T has clearly described how the integration of Leap's spectrum and other assets will improve Leap customers' wireless experience, and the many ways that Leap customers will benefit from migrating to AT&T's advanced 4G network.²⁹ These elements of

²⁵ Public Interest Statement at 9.

²⁶ August 20, 2013 Letter at 3. AT&T also provided a preliminary list of devices that AT&T currently expects to offer Leap customers. *Id.* at Exhibit 2. Youghioghenny claims that Leap customers "will necessarily incur some additional equipment costs" as a result of the transaction. Youghioghenny Petition at 23. As AT&T has explained, however, prepaid subscribers typically upgrade their devices frequently, August 20, 2013 Letter at 2, and Leap customers are no exception. Indeed, approximately **[BEGIN LEAP CONFIDENTIAL INFORMATION]** **[END LEAP CONFIDENTIAL INFORMATION]** percent of Leap handsets were replaced over the last 18 months. Declaration of Robert A. Strickland, Chief Technology Officer for Leap Wireless International, Inc. ¶ 2 (Oct. 7, 2013) ("Strickland Decl."). Such customers can be seamlessly migrated to AT&T's network as they select their new devices.

²⁷ August 20, 2013 Letter at 2-3 ("[A]s AT&T learns more about Leap's customer base, it may formulate offers designed to further encourage Leap customers to migrate to AT&T's network within 18 months of merger close.").

²⁸ *Id.* at 3.

²⁹ Public Interest Statement at 8-10, 13-18; Hogg Decl. ¶¶ 11-12; Moore Decl. ¶¶ 16-17. Youghioghenny wrongly claims that Leap's South Texas customers will reap no benefit from the transaction because Leap purportedly has superior 3G and 4G coverage to AT&T in South Texas. Youghioghenny Petition at 16, 22, 28. However, Leap's limited LTE network is generally less spectrally efficient, supports lower throughput speeds and is deployed to far fewer areas than AT&T's 4G LTE network. Youghioghenny also compares 3G and 4G coverage maps from Leap's website to 3G and 4G coverage maps for AT&T from a third party website

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AT&T's preliminary customer transition plans closely track the customer transition plans that were described in the T-Mobile/MetroPCS merger proceeding and approved in the Order (without voluntary commitments or conditions).³⁰ There is no basis for treating these plans differently.³¹

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(opensignal.com) rather than from AT&T's website. Youghioghenny Petition, Exhibit I. But a comparison of maps from Leap's website with the maps from AT&T's website demonstrates AT&T's superior coverage in and around South Texas. *See* Exhibit 1. Thus, upon migrating to AT&T's network, Leap customers will gain a superior network experience both in South Texas and throughout the country on AT&T's nationwide 4G network.

³⁰ In the T-Mobile/MetroPCS proceeding, T-Mobile indicated that it would, among other things: complete migration within a certain timeframe (by the second half of 2015); give MetroPCS customers access to T-Mobile USA's network without increasing the price of their existing service plans; support the services of existing MetroPCS customers during the transition and allow them to purchase HSPA+/LTE devices that work on T-Mobile USA's network; offer T-Mobile USA's services and handsets to new and upgrading customers of MetroPCS; begin migration promptly after closing; and develop incentives that would encourage migration. T-Mobile explained that it expected most customers to migrate "quickly and naturally" because historically 60-65 percent of MetroPCS subscribers upgrade their handsets each year and migrating customers will have a wider selection of smartphones and a higher quality network available to them. *Applications of Deutsche Telekom AG, T-Mobile USA, Inc., & MetroPCS Commc'ns, Inc., for Consent to Transfer of Control of Licenses & Authorizations*, WT Dkt No. 12-301, Description of Transaction, Public Interest Showing, and Related Demonstrations of Deutsche Telekom AG and MetroPCS Communications, Inc. at 36-38 (filed Oct. 18, 2012); Declaration of Peter Ewens, Chief Strategy Officer, T-Mobile USA, Inc. ¶ 27 (Oct. 18, 2012); Declaration of Mark McDiarmid, Vice President, Radio Network Engineering and Development, T-Mobile USA, Inc. ¶¶ 17-18 (Oct. 18, 2012); Response to Information Request by Deutsche Telekom AG and T-Mobile USA, Inc., at 14-15 (filed Jan. 7, 2013). *See also T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2347-48 ¶¶ 70, 74 (citing with approval T-Mobile's migration plans). AT&T's preliminary migration plans are substantially similar to T-Mobile's plans, and like T-Mobile, AT&T expects migration of Leap customers to proceed quickly and naturally for the same reasons. *See also* n. 26, *infra*.

³¹ Opponents also have argued that AT&T will be unable to transition Leap's prepaid customers from their CDMA-based networks and devices effectively. Youghioghenny Petition at 23. To the contrary, AT&T has a history of successfully integrating networks, including the integration of CDMA-based networks and the migration of existing customers, including prepaid customers, from those networks. Moore Decl. ¶¶ 25, 27. AT&T successfully upgraded Centennial's 2G network in the acquired footprint to 3G. *Id.* ¶ 25. AT&T also successfully integrated the

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In sum, the record here, like the one in T-Mobile/MetroPCS, demonstrates that this transaction will result in substantial consumer benefits and is in the public interest.

III. THE TRANSACTION WILL NOT HARM COMPETITION

Applicants demonstrated in their Public Interest Statement that providers of mobile wireless services compete across many dimensions, that competition is intensifying, and that this transaction will enhance, not harm, competition. This transaction affects less than two percent of the spectrum available and suitable nationwide for mobile services, so it will not result in anticompetitive spectrum aggregation. The transaction does not reduce the number of national wireless carriers, so it will have no adverse impact on competition at the national level.³² Nor will it have any adverse impact on competition at the local level,³³ as the local areas in which Leap operates are, and will remain, competitive in light of Leap's generally modest (and declining) presence in those areas and ongoing competition from the national carriers and other providers.³⁴ Indeed, by strengthening the Cricket brand and bringing it to numerous areas where it does not currently provide service, this transaction will enhance competition across the country.

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CDMA-based Alltel network assets it acquired in 2010 from Verizon Wireless. *Id.* ¶ 27. The customer migration process was completed on time and as projected. *Id.* The insights that AT&T has acquired in prior merger integration experience will be applied here. *Id.* ¶ 29.

³² Public Interest Statement at 24-31.

³³ *Id.* at 32-34.

³⁴ *Id.*

Opponents proffer no evidence demonstrating a likelihood of competitive harm, nor could they.³⁵ The reality is that there is vigorous competition for prepaid/no-contract services of the sort Leap offers, including from the expanding T-Mobile/MetroPCS and the financially strengthened Sprint.³⁶ This transaction will provide an additional injection of competition into that space as the combined company will be able to compete more effectively against the national LTE service offerings of these and other competitors with a new facilities-based, prepaid/no-contract offering using AT&T's 4G LTE/HSPA+ network. This, in turn, can be expected to stimulate additional competitive responses from the other national and regional providers, which will further benefit customers. Opponents have no answer to this compelling case of strengthened competition. Their claims are based on little more than rhetoric, and in many instances are squarely at odds with prior findings and conclusions on numerous issues – including several reached or reiterated in the recent *T-Mobile/MetroPCS Order* on facts similar to those presented here. Such speculative claims about competitive harms should be rejected.

A. The Transaction Raises No Spectrum Aggregation Concerns

Claims this transaction will result in aggregate spectrum holdings that foreclose effective competition plainly fail in the face of the indisputable facts that:

- This transaction involves less than two percent of the spectrum nationwide available and usable for mobile services;
- In each area involved in this transaction, all four national carriers hold spectrum, and there are other spectrum holders that can deploy their spectrum or make it available for use by other carriers;

³⁵ See, e.g., CCA Petition at 7-12; Greenlining Petition at 7-13; Public Knowledge Petition at 12, 15-17; Smith Petition at 3-6, 9-12.

³⁶ Public Interest Statement at 21.

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- Substantial additional spectrum is planned to be available for mobile services in the near-term, including through the PCS H Block and broadcast incentive auctions in the coming year; and
- Even after this transaction, AT&T's holdings of spectrum available and usable for mobile services will trail well behind those of the largest spectrum holder.

The spectrum aggregation that results from this transaction thus raises no competitive concerns, and no spectrum divestitures are required.

Application of the Commission's current spectrum screen to the present transaction confirms the absence of competitive harm. The screen is intended "to eliminate from further review those markets in which there is clearly no competitive harm relative to today's generally competitive marketplace."³⁷ Moreover, the screen is "designed to be conservative and ensure that any markets in which there is potential competitive harm based on spectrum aggregation are identified."³⁸ Under this "conservative" spectrum screen, there is "clearly no competitive harm" in 318 of the 356 CMAs where Leap holds spectrum. These 318 CMAs encompass 130 million of the 137 million people covered by the licenses involved in this transaction.

In the CMAs where the screen is triggered by this transaction, a more detailed analysis shows there can be no serious claim that entry and expansion will be limited by spectrum

³⁷ *Applications of AT&T Inc. & Dobson Commc'ns Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 22 FCC Rcd 20,295, 20,317 ¶ 39 (2007).

³⁸ *Id.* at 20,312-13 ¶ 30. Because additional spectrum has become available for mobile services but has not yet been added to the screen, the screen may be triggered even when there is no possibility of competitive harm from the spectrum aggregation under review. *See Policies Regarding Mobile Spectrum Holdings*, WT Dkt No. 12-269, Comments of AT&T Inc. at 36-46 (filed Nov. 28, 2012).

scarcity.³⁹ In all of these CMAs, all four national carriers hold spectrum, along with at least one additional licensee.⁴⁰ And in all but two of these CMAs, there is a sixth licensee, and in some CMAs, up to 10 licensees.⁴¹ In addition, the Commission plans to auction the PCS H Block⁴² and 600 MHz spectrum⁴³ in the coming year, providing additional spectrum acquisition opportunities for existing carriers and new entrants in these CMAs (and nationwide).⁴⁴ The Commission repeatedly has held that such facts establish a lack of potential competitive harm.⁴⁵

³⁹ Contrary to Opponents' suggestions, the triggering of a screen in a particular CMA does not mean that the transaction will harm competition in that CMA, but merely that the Commission should conduct a further analysis. See, e.g., *Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corp., Horizon Wi-Com, LLC, NextWave Wireless, Inc. & San Diego Gas & Elec. Co. for Consent to Assign & Transfer Licenses*, Memorandum Opinion and Order, 27 FCC Rcd 16,459, 16,471-72 ¶¶ 33-34 (2012).

⁴⁰ Public Interest Statement, Exhibit B (Competitors Spectrum Chart); August 20, 2013 Letter, Exhibit 1 (Revised Spectrum Aggregation Chart).

⁴¹ *Id.*

⁴² See *Auction of H Block Licenses in the 1915-1920 MHz & 1995-2000 MHz Bands; Comment Sought on Competitive Bidding Procedures for Auction 96*, Public Notice, 28 FCC Rcd 10,013 (2013); see also *Service Rules for Advanced Wireless Servs. H Block - Implementing Section 6401 of the Middle Class Tax Relief & Job Creation Act of 2012 Related to the 1915-1920 MHz & 1995-2000 MHz Bands*, Report and Order, 28 FCC Rcd 9483 (2013).

⁴³ See *Expanding the Econ. & Innovation Opportunities of Spectrum through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd 12,357, 12,401-02 ¶¶ 123-26 (2012) (proposing 600 MHz band plan).

⁴⁴ The Commission also indicated it may commence an auction for the AWS-3 band by September 2014, and is required to do so by February 2015 pursuant to the Middle Class Tax Relief and Job Creation Act of 2012. See *Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands*, Notice of Proposed Rulemaking and Order on Reconsideration, 28 FCC Rcd 11,479, 11,488 ¶ 13 (2013).

⁴⁵ See, e.g., *Applications of Cellco P'ship d/b/a Verizon Wireless & Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, & Spectrum Manager & De Facto Transfer Leasing Arrangements*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17,444, 17,446-47, 17,490-94 ¶¶ 3, 98-113 (2008) ("Verizon/ALLTEL Order") (initial spectrum and HHI screens identified 118 CMAs that had not been voluntarily divested; the Commission did not review 108 of the CMAs in depth because there were four or more

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As Dr. Israel has explained, “[A]ggregation of spectrum in the hands of one provider causes a concern only if other providers are sufficiently restricted in their holdings of spectrum that they are unable to counter an anticompetitive output restriction.”⁴⁶ He concluded that there can be “no such concern” here, where spectrum is dispersed across other national carriers, additional licensees have unused spectrum, and a substantial additional amount of spectrum is about to be licensed.⁴⁷ And, as AT&T has demonstrated, it plans to deploy Leap’s spectrum promptly,⁴⁸ and the Commission has recognized that the deployment of acquired spectrum for

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competitors present post-transaction with thoroughly built-out networks, adequate bandwidth, and the ability to offer competitive nationwide services and thus no likelihood of competitive harm; of the 10 CMAs examined in depth, divestitures were required in five due to concentration and coverage concerns, not spectrum aggregation); *Sprint Nextel Corp. & Clearwire Corp. Applications for Consent to Transfer Control of Licenses, Leases, & Authorizations*, Memorandum Opinion and Order, 23 FCC Rcd 17,570, 17,603-04 ¶¶ 81-83 (2008) (“*Sprint/Clearwire Order*”) (no significant likelihood of harm was found in 43 areas caught by the spectrum screen, including Honolulu, where the Commission found there were four other providers with at least 30 MHz each and 24 MHz was available on the secondary market); *Application of Aloha Spectrum Holdings Co. LLC & AT&T Mobility II LLC Seeking FCC Consent for Assignment of Licenses & Authorizations*, Memorandum Opinion and Order, 23 FCC Rcd 2234, 2237 ¶¶ 11-12 (2008) (no competitive harm found in 11 CMAs, because in each CMA there were two to four other providers with sufficient market share and spectrum, several other firms held spectrum they could use to enter the market, secondary market sales were possible, and new entrants could bid for spectrum in the market through the 700 MHz auction); *Applications of Midwest Wireless Holdings, L.L.C. & ALLTEL Commc’ns, Inc. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 21 FCC Rcd 11,526, 11,558-60 ¶¶ 84-91 (2006) (merged entity would hold between 50 and 75 MHz in two RSAs, but Commission found little change in the character of competition because there was a large number of carriers also serving portions of the CMA and two carriers covering the CMAs).

⁴⁶ Israel Decl. ¶ 45.

⁴⁷ *Id.*; Israel Reply Decl. ¶ 49-53.

⁴⁸ [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]

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LTE service can offset any perceived potential for competitive harm due to spectrum aggregation.⁴⁹ Thus, contrary to claims of Youghioghenny and other Opponents, there is no “serious spectrum screen problem”⁵⁰ affecting the seven million people living in the CMAs where the screen is triggered.

No Opponent even attempts to refute these showings with actual evidence or analysis. Instead, some Opponents misconstrue the current screen, contending that hitting the screen is proof of competitive harm *per se* rather than an indicator that a particular CMA merits further investigation. Youghioghenny and Public Knowledge, for example, treat the triggering of the screen in McAllen, Texas as conclusive evidence of competitive harm there.⁵¹ Yet, an accurate assessment of that area shows:

- All four national carriers hold at least 52 MHz of spectrum in McAllen;
- Two additional licensees, DISH and Cavalier, hold spectrum in McAllen, which they can deploy or make available to other carriers;
- PCS H Block and broadcast spectrum is planned to be auctioned in McAllen in the coming year; and

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⁴⁹ *Applications of AT&T Inc., Cellco P’ship d/b/a Verizon Wireless, Grain Spectrum, LLC, & Grain Spectrum II, LLC for Consent to Assign & Lease AWS-1 & Lower 700 MHz Licenses*, WT Dkt No. 13-56, Memorandum Opinion and Order, DA 13-1854 ¶ 67 (WTB rel. Sept. 3, 2013) (“*AT&T/Verizon/Grain Order*”).

⁵⁰ Youghioghenny Petition at 5.

⁵¹ *Id.* at 6; Public Knowledge Petition at 6.

- Even after the consummation of this transaction, the combined company still will not be the largest holder of spectrum available and usable for mobile services in McAllen.⁵²

Similar conclusions apply to the other locations identified in the petitions as triggering the screen.⁵³

Opponents not only mischaracterize the spectrum screen, but make numerous factual misstatements. For example, the Competitive Carriers Association (“CCA”) – whose members collectively hold several times as much spectrum as AT&T and include the nation’s largest spectrum holder – wrongly claims that AT&T has a “dominant spectrum position” and, together with Verizon, controls “a majority of the available spectrum resources. . . .”⁵⁴ Public Knowledge builds its arguments around a spectrum chart that contains a number of errors⁵⁵ and shows a combined AT&T/Leap exceeding the spectrum screen in several dozen counties that are not even involved in this transaction.⁵⁶ For its part, Youghiogheny claims that “[i]n [S]outh

⁵² Sprint holds 213.5 MHz of spectrum in McAllen available and usable for mobile services, consisting of 16 MHz of SMR, 40 MHz of PCS, and 157.5 MHz of BRS/EBS, of which 33 MHz is counted toward the current spectrum screen.

⁵³ Youghiogheny complains about spectrum aggregation in Corpus Christi and Brownsville, Texas. Youghiogheny Petition at 6. Public Knowledge protests about allegedly excessive spectrum aggregation in Lake Charles, Louisiana. Public Knowledge Petition at 6. In each instance, all four national carriers hold at least 50 MHz of spectrum, two (and sometimes three) other licensees also hold spectrum, the PCS H Block and 600 MHz spectrum will be auctioned in the coming year, and Sprint will remain the largest spectrum holder, even after the consummation of the AT&T/Leap transaction.

⁵⁴ CCA Petition at 7-8.

⁵⁵ For example, AT&T neither holds nor has a contract to acquire any cellular spectrum in Loudon County, TN. AT&T holds 25 MHz, not 50 MHz, of spectrum in the following counties, even after all pending transactions are consummated: Baldwin, GA; Hancock, GA; Johnson, GA; Laurens, GA; Washington, GA; Wilkinson, GA; Vernon, LA; and Monroe, OH.

⁵⁶ Public Knowledge Petition, app. A. *See, e.g.*, Fulton, AR; Marion, AR; Searcy, AR; Alpena, MI; Chippewa, MI; Lake, MI; Luce, MI; Mackinac, MI; Mason, MI; Montmorency, MI; Presque

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Texas, the combination which would result from this deal creates a regional spectrum concentration on a magnitude which we believe the Commission has never before approved.”⁵⁷ In fact, the combined AT&T/Leap will be only the second largest holder in South Texas of spectrum suitable and available for mobile services on a MHz/POP basis.⁵⁸ The Commission should reject arguments built on these inaccuracies.

The Commission also should reject Public Knowledge’s suggestion to examine PCS spectrum aggregation in isolation, contrary to longstanding precedent.⁵⁹ The existing spectrum screen applies to all spectrum, and there is no reason to single out PCS spectrum for a separate screen.⁶⁰

Finally, the Commission should reject calls from several Opponents to alter the current spectrum screen prior to deciding the pending Mobile Spectrum Holdings proceeding.⁶¹ Indeed,

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Isle, MI; Roscommon, MI; Jefferson, MS; Oregon, MO; Shannon, MO; Billings, ND; Bowman, ND; Dunn, ND; Golden Valley, ND; Hettinger, ND; Slope, ND; Stark, ND; Ashtabula, OH; Columbiana, OH; Tuscarawas, OH; Clearfield, PA; Crawford, PA; Erie, PA; Jefferson, PA; and Mercer, PA.

⁵⁷ Youghioghenny Petition at 6. According to Youghioghenny’s petition, the South Texas “cluster”, for purposes of its spectrum aggregation argument, includes those counties highlighted yellow in its Exhibit A. *See* Youghioghenny Petition at Exhibit A. Confusingly, Youghioghenny’s economists elsewhere more narrowly define South Texas as “comprised of” only the following five CMAs: 033-San Antonio, TX; 112-Corpus Christi, TX; 128-McAllen-Edinburg-Mission, TX; 162-Brownsville-Harlingen, TX; and 281-Laredo, TX. Youghioghenny Petition, Information Age Economics Declaration at 32. (“IAE Decl.”).

⁵⁸ *See, e.g., n. 52, supra.* This is the case under either definition of South Texas put forth by Youghioghenny and its economists.

⁵⁹ *See* Public Knowledge Petition at 5-6.

⁶⁰ Because AT&T will acquire only PCS and AWS spectrum, this transaction raises no issue related to the aggregation of spectrum below 1 GHz. Israel Reply Decl. ¶ 45.

⁶¹ The Commission has expressly stated that, while the Mobile Spectrum Holdings proceeding is pending, it “will continue to apply its current case-by-case approach to evaluate mobile spectrum

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as it has done in the past,⁶² the Commission should address these proposals in the Mobile Spectrum Holdings proceeding and rely on the existing screen here. Also, consistent with past decisions, the Commission should continue to reject requests, such as Youghiogheny and Smith make, to freeze all secondary spectrum market transactions until the Mobile Spectrum Holdings proceeding is completed.⁶³

B. The Transaction Will Not Harm Competition at the National Level

In recent transactions, the Commission has concluded that the key competitive decisions by AT&T and the other three national wireless carriers are made at the national level in response

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holdings....” *Policies Regarding Mobile Spectrum Holdings*, Notice of Proposed Rulemaking, 27 FCC Rcd 11,710, 11,718 ¶ 16 n.59 (2012). Since that time, the Commission has not departed from this stance and has approved several assignment/transfer applications. *See, e.g., Applications of AT&T Inc. & Atl. Tele-Network, Inc. for Consent to Transfer Control of & Assign Licenses & Authorizations*, WT Dkt No. 13-54, Memorandum Opinion and Order, DA 13-1940 ¶ 28 (WTB IB rel. Sept. 20, 2013) (“declin[ing] to modify the current input market for spectrum....and...not[ing] that this issue, along with a range of other related issues, are being considered by the Commission in its ongoing review of its policies regarding mobile spectrum holdings”) (“AT&T/ATNI Order”); *AT&T/Verizon/Grain Order* ¶ 30 (same).

⁶² *See AT&T/ATNI Order* ¶ 28; *AT&T/Verizon/Grain Order* ¶ 35; *Applications of SOFTBANK Corp., Starburst II, Inc., Sprint Nextel Corp., & Clearwire Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration, 28 FCC Rcd 9642, 9659-60 ¶ 42 (2013) (“*Sprint/SoftBank Order*”).

⁶³ *See AT&T/ATNI Order* ¶ 28 n.74; *AT&T/Verizon/Grain Order* ¶ 35 n.96. Contrary to Smith’s suggestion, Smith Petition at 16, there is nothing “similar” about the Commission’s brief stoppage of the clock in the AT&T/ATNI transaction to permit the submission of additional customer transition information and Smith’s proposal to freeze secondary market transactions indefinitely until the Mobile Spectrum Holdings proceeding is completed. Smith is also mistaken in purporting to find support for his request in the *AT&T/Cell South Order* – there, the Commission elected to follow its policy of “continu[ing] to apply its current approach to evaluate mobile spectrum holdings” during the pendency of the Mobile Spectrum Holdings proceeding and the Commission should do the same here. *Applications of AT&T Inc. & Cellular S., Inc. for Consent to Assign Licenses Covering Parts of Ala., Ga., & Tenn.*, Memorandum Opinion and Order, ULS File Nos. 0005597386 and 0005597395, DA 13-1783 ¶ 15 (WTB rel. Aug. 20, 2013).

to competition from other national carriers.⁶⁴ This transaction in no way affects the number of national competitors, so it plainly will have no adverse impact on national competition. Indeed in 2011, both the Commission Staff and Department of Justice concluded that Leap does not constrain AT&T and the other nationwide carriers with regard to any key competitive factor, including prices, service plans, or the development and deployment of mobile broadband infrastructure and devices.⁶⁵

Since that time, Leap's competitive significance has only declined, and it has done so significantly. Leap lost an estimated 22 percent of its subscriber base and saw its estimated national market share decline to **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** percent between March 31, 2012 and June 30, 2013.⁶⁶ Moreover, Leap to date has deployed LTE in only a small portion of its network footprint and Leap's financial resources and limited spectrum depth make it uneconomic to upgrade its current 3G CDMA platform to LTE across its network.⁶⁷ No Opponent has offered any evidence to the contrary.⁶⁸

⁶⁴ See Public Interest Statement at 23-24 & nn.106-11 (citing decisions). The Department of Justice has reached a similar conclusion. See *United States v. AT&T Inc.*, No. 11-01560, Second Amended Compl. ¶ 19 (D.D.C. filed Aug. 31, 2011) available at <http://www.justice.gov/atr/cases/f275100/275128.pdf> ("Am. Compl.") ("Because competitive decisions affecting technology, plans, prices, and device offerings are typically made at a national, rather than a local, level, the rivals that affect those decisions generally are those with sufficient national scale and scope....").

⁶⁵ See Public Interest Statement at 24-25 & n.113(citing decisions).

⁶⁶ Declaration of S. Douglas Hutcheson, CEO, Leap Wireless Int'l, Inc., ¶ 5 (Aug. 1, 2013) ("Hutcheson Decl."); Israel Reply Decl. ¶ 21.

⁶⁷ Hutcheson Decl. ¶¶ 9, 11-12; Public Interest Statement at 11.

⁶⁸ Although Youghioghenny argues that Leap has "plans to expand substantially" its LTE coverage, its only evidence for this assertion consists of a single slide from Leap's Q1 2013

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Youghioghenny argues that Leap should be deemed a significant national competitor because it has offered service outside of its network footprint on an MVNO basis.⁶⁹ But Leap's MVNO operations have not made Leap a meaningful national competitor. As explained by Leap's CEO, that MVNO strategy has fallen short of expectations, and Leap is in the process of significantly contracting its distribution footprint.⁷⁰ Youghioghenny offers no evidence that Leap's very limited MVNO offering has had any effect on the national carriers' behavior.

Youghioghenny also argues that Leap is a "disruptive" "maverick" that affects competition at the national level.⁷¹ A firm cannot be a "maverick," however, if it is having no impact on competition; the term certainly cannot be applied to a firm like Leap that is losing market share and failing to evoke competitive responses. The only evidence Opponents offer of supposedly disruptive behavior by Leap all occurred years ago, before the findings by Commission Staff and the Department of Justice that Leap does not affect the key competitive decisions of the national carriers and before Leap's more recent struggles.

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Earnings Presentation. IAE Decl. at 11, app. A. Far from describing any substantial LTE expansion, the slide indicates only that Leap "*may* elect to deploy up to 10M additional LTE POPS in 2013" and that Leap expects "to implement nationwide 4G LTE *roaming* in 2H13." *Id.* at app. A (emphasis added). As Mr. Hutcheson explains, Leap's highly leveraged balance sheet impedes its ability to buildout an LTE network, and just this year it has significantly cut capital expenditures. Hutcheson Decl. ¶¶ 7, 12. *See also* Leap Wireless Int'l Inc., Quarterly Report (Form 10-Q), at 32 (Aug. 5, 2013) ("We recently determined to focus our capital spending on enhancing 3G and LTE network coverage and capacity in existing markets rather than deploying LTE in new markets.").

⁶⁹ Youghioghenny Petition at 3, 19.

⁷⁰ Hutcheson Decl. ¶¶ 8, 13; Public Interest Statement at 11.

⁷¹ Youghioghenny Petition at 18, 20, 21; *see also* Smith Petition at 8-9 (arguing that Leap has "developed novel and industry-changing products and services").

In short, there is no evidence whatsoever that this transaction will diminish competition at the national level. To the contrary, the transaction will *intensify* national competition, by strengthening AT&T's ability to respond competitively to other national providers of "value" services, including T-Mobile and Sprint. Indeed, as discussed further below, while Leap's no-contract business has been in decline, these other competitors have been getting stronger. This transaction will offer consumers a much stronger Cricket brand with a nationwide 4G LTE network and world-class device portfolio which will be able to compete much more effectively with its large, well-financed and spectrum-rich rivals than Leap could ever hope to do on its own.

C. There Is No Separate Prepaid or "Value" Market and Competition To Provide Prepaid/No-Contract Services Will Remain Robust

Notwithstanding that the Wireless and International Bureaus rejected an identical argument just a few months ago in the *T-Mobile/MetroPCS Order*,⁷² Greenlining and Public Knowledge again ask the Commission to abandon its longstanding precedent and define a distinct product market limited either to prepaid or "value-conscious" services.⁷³ There is no basis for either change of course. To the contrary, the line between prepaid and postpaid services is becoming increasingly blurry, and Greenlining's proposal confuses differentiated products with distinct markets.

⁷² *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2332 ¶ 28.

⁷³ Greenlining Petition at 5-7; Public Knowledge Petition at 11-14. Greenlining argues that "[a]s Applicants acknowledge, AT&T [and Leap] are not 'close competitors,' because AT&T and Leap's service offerings are distinctly different. Similarly, recent porting data indicates that AT&T and Leap serve different sets of customers. AT&T's pricing for wireless service is significantly higher than Leap's pricing for comparable service. Distinct products, customers, and prices are all indicators of a relevant product submarket." Greenlining Petition at 7. As discussed herein, these arguments confuse the concepts of relevant market and differentiated products.

According to Public Knowledge, prepaid services are not substitutes for postpaid services because prepaid plans “often cost less than postpaid plans,” “never require lengthy contracts, and generally do not involve credit checks.”⁷⁴ But the mere fact that prepaid plans “often” cost less than postpaid plans and “generally” do not require credit checks, is no basis for placing them in a distinct product market. Rather, the line between prepaid and postpaid plans is indistinct and one that has become even more elusive than it was in the past.⁷⁵

More specifically, as shown in the opening declaration of Dr. Israel, prepaid and postpaid offerings increasingly overlap in terms of devices, network quality, features, and price points, and recent marketplace developments are further blurring the line between so-called “value” and other wireless offerings.⁷⁶ Indeed, as Dr. Israel observes, marketplace developments, such as the introduction of pricing options that eliminate device subsidies from postpaid plans⁷⁷ and the availability of high-end devices and high-speed networks through prepaid offerings, further

⁷⁴ Public Knowledge at 12.

⁷⁵ Israel Decl. ¶ 13.

⁷⁶ *Id.* T-Mobile’s recent adoption of an “un-carrier” strategy is a clear example of one carrier’s decision to incorporate what had traditionally been elements of prepaid and postpaid service into one plan. *See* T-Mobile, Fair & Simple Cell Phone Plans w/ No Annual Contract, <http://deals.t-mobile.com/unlimited-4g-data-no-contract> (last visited Sept. 16, 2013).

⁷⁷ Israel Reply Decl. ¶ 19. *See* Press Release, Verizon Wireless, Verizon Edge Device Payment and Early Upgrade Plan (July 18, 2013), *available at* <http://news.verizonwireless.com/news/2013/07/edge-device-payment-early-upgrade.html>; Press Release, T-Mobile US, Inc., T-Mobile Announces Boldest Moves Yet as America’s Un-Carrier (July 10, 2013), *available at* <http://newsroom.t-mobile.com/phoenix.zhtml?c=251624&p=irol-newsArticle&ID=1836669>; Press Release, AT&T Inc., AT&T Customers Can Get a New Smartphone or Tablet Every Year with No Down Payment with “AT&T Next” (July 16, 2013), *available at* <http://www.att.com/gen/press-room?pid=24538&cdvn=news&newsarticleid=36749>.

strengthen the case for an all-wireless market.⁷⁸ These observations are confirmed by switching data, which show that there is significant switching by customers from postpaid to prepaid plans, and vice versa.⁷⁹

According to Public Knowledge, the rapid growth of prepaid services, relative to postpaid services, requires recognition of a separate prepaid market.⁸⁰ But this argument has it exactly backwards. This difference in growth rates is further evidence that customers are actively substituting between prepaid and postpaid services, thus reaffirming the conclusion they are in the same relevant product market.

For its part, Greenlining does not provide any support for its request that the Commission depart from longstanding precedent and recognize a distinct market consisting of “value-conscious services.” Nor does it purport to explain how any such submarket could even be defined given that there is a continuum of value propositions available to consumers from multiple carriers and those offerings are constantly changing. The Commission has rejected Greenlining’s argument in the past for good reason: there is no basis for breaking the set of

⁷⁸ See, e.g., Andrew Kameka, *T-Mobile Begins Offering No-Contract Unlimited Nationwide 4G Data Plans*, Mobile Burn (Jan 9, 2013), <http://www.mobileburn.com/21110/news/t-mobile-begins-offering-no-contract-unlimited-nationwide-4g-data-plans#biA4Q23MtAHi4LHS.99>; Mike Dano, *Sprint Launches Prepaid LTE Service through Virgin, Boost*, FierceWireless (Feb. 25, 2013), <http://www.fiercewireless.com/story/sprint-launches-prepaid-lte-service-through-virgin-boost/2013-02-25#ixzz2etJZ8ZBP>.

⁷⁹ Israel Reply Decl. ¶¶ 14-16.

⁸⁰ Public Knowledge Petition at 13 (“[T]he relative growth rates of the pre- and post-paid markets further show that the two are distinct. Between the end of 2009 and the end of 2011, the number of prepaid subscriptions grew 29 percent. Meanwhile, the number of postpaid subscriptions grew just under three percent during that period.”).

options available to consumers into distinct groupings, and any attempt to do so would be inherently arbitrary.

Even if the Commission were to examine a narrower prepaid or “value” segment, it would find the transaction does not threaten competition. On the contrary, prepaid/no-contract service will continue to be provided by numerous firms offering a wide and growing variety of options for consumers. The most significant of these competitors, T-Mobile/MetroPCS and Sprint, enjoy a nationwide presence and offer more extensive, advanced 4G rollouts and service offerings than Leap, will have a far larger share of prepaid/no-contract business than the combined company will have.⁸¹

Moreover, while Leap’s competitive position has weakened, these and other rivals have grown larger and more successful. For example, T-Mobile is competing intensely and directly with Leap, using T-Mobile’s branded postpaid and prepaid offerings, its GoSmart flanker brand, and its recently acquired MetroPCS affiliate. Immediately following its acquisition of MetroPCS, T-Mobile launched its “Apollo 15” strategy, “aggressively expanding [the] geographic presence of Metro’s distribution”⁸² and specifically targeting Leap’s customers.⁸³ T-Mobile’s expansion plans for MetroPCS, which T-Mobile has described as “doubl[ing] [MetroPCS’s] reach in less than three months,”⁸⁴ include 15 new markets, of which “13 [are] in

⁸¹ Israel Reply Decl. ¶ 20.

⁸² T-Mobile US Inc., Q2 2013 Earnings Call Transcript (Aug. 8, 2013), <http://www.morningstar.com/earnings/55286832-t-mobile-us-tmus-q2-2013.aspx>.

⁸³ See Sue Marek, *T-Mobile CEO Hints at New Prepaid Plan, Says He’s ‘Intrigued’ by Dish’s Vision*, FierceWireless (July 12, 2013), available at <http://www.fiercewireless.com/story/t-mobile-ceo-hints-new-prepaid-plan-says-hes-intrigued-dishs-vision/2013-07-12>.

⁸⁴ Press Release, T-Mobile US, Inc., MetroPCS Takes on New Markets, *supra*.

rival Leap Wireless International Inc. (LEAP)’s territory.”⁸⁵ Indeed, T-Mobile CEO John Legere described the expansion as “T-Mobile network, T-Mobile devices, *Leap customers*.”⁸⁶ T-Mobile Chief Operating Officer Tom Keys explained the expansion “gets us into those Leap Markets now, arriving months in advance of AT&T,”⁸⁷ and T-Mobile Chief Marketing Officer Mike Sievert stated that T-Mobile/MetroPCS would “*go right into the places where those Leap customers are* who are hungry for something new and offer them something superior.”⁸⁸ T-Mobile has boasted the combination with MetroPCS has created “*an even stronger disruptive force* in the U.S. wireless market.”⁸⁹ And as of October 3, 2013, MetroPCS had over 1100 retail locations in these 15 new operating regions, the majority of which are in the Leap footprint.⁹⁰ T-

⁸⁵ Moritz, *T-Mobile Adds 15 MetroPCS Cities*, *supra*; see also Sinead Carew, *MetroPCS Doubles Operating Markets to Compete with Leap*, Reuters (July 25, 2013), available at <http://www.reuters.com/article/2013/07/25/us-tmobile-metropcs-idUSBRE96O16620130725> (“MetroPCS Chief Operating Officer Tom Keys said the company’s new markets include 13 metropolitan areas where it will compete with Leap.”); Press Release, T-Mobile US, Inc., *MetroPCS Takes on New Markets*, *supra* (“Less than three months after completing the combination of T-Mobile USA and MetroPCS, the company has doubled its MetroPCS brand presence across the country and is bringing ‘Wireless for All’ to 15 new markets.”). The 15 new MetroPCS markets include Baltimore, Birmingham, Cleveland and Akron, Corpus Christi, Fresno, Houston, Memphis, New Orleans, Rio Grande Valley, San Antonio and Austin, San Diego, Seattle and Tacoma, Tallahassee, Toledo and Sandusky, and Washington, D.C. *Id.*

⁸⁶ Marek, *T-Mobile CEO Hints at New Prepaid Plan*, *supra* (emphasis added).

⁸⁷ Moritz, *T-Mobile Adds 15 MetroPCS Cities*, *supra*.

⁸⁸ Carew, *MetroPCS Doubles Operating Markets to Compete with Leap*, *supra* (emphasis added).

⁸⁹ Press Release, T-Mobile US, Inc., *T-Mobile and MetroPCS Combination Complete – Wireless Revolution Just Beginning* (May 1, 2013), available at <http://newsroom.t-mobile.com/phoenix.zhtml?c=251624&p=irol-newsArticle&ID=1813495> (emphasis added).

⁹⁰ See MetroPCS, Store Locator, <http://www.metropcs.com/metro/maps/storelocator.jsp> (last visited Oct. 3, 2013); Israel Reply Decl. ¶ 25; see also Moritz, *T-Mobile Adds 15 MetroPCS Cities*, *supra* (quoting T-Mobile Chief Marketing Officer Mike Sievert as stating “MetroPCS will open 1,000 new stores this year”). The term “retail locations” refers collectively to company-owned stores, exclusive agents, dealers, and big box retailers.

Mobile has been aggressively rolling out 4G services and is offering LTE access in MetroPCS's expansion markets, giving MetroPCS "a leg up on its prepaid competitors."⁹¹

Initial indications from porting data show T-Mobile's strategy is succeeding. It is winning significant numbers of customers from Leap in these areas since the introduction of the MetroPCS brand. Dr. Israel reports in his Reply Declaration that T-Mobile's share of Leap port-outs in the Apollo 15 markets has increased from **[BEGIN LEAP HIGHLY CONFIDENTIAL INFORMATION]** **[END LEAP HIGHLY CONFIDENTIAL INFORMATION]** percent at the time of the MetroPCS acquisition to **[BEGIN LEAP HIGHLY CONFIDENTIAL INFORMATION]** **[END LEAP HIGHLY CONFIDENTIAL INFORMATION]** percent in September 2013.⁹²

T-Mobile also is competing with its GoSmart prepaid brand, which it launched nationwide in February 2013, two months before the Bureaus approved the MetroPCS transaction.⁹³ All told, T-Mobile "led the US wireless industry" with branded postpaid net additions of 688,000, and had a total of 1.1 million net customer additions during the second quarter.⁹⁴

⁹¹ Phil Goldstein, "T-Mobile to Expand MetroPCS Footprint by 100M POPs," *FierceWireless*, (May 15, 2013), <http://www.fiercewireless.com/story/t-mobile-expand-metropcs-footprint-100m-pops/2013-05-15#ixzz2X3lBpuws> (statement attributed to T-Mobile CFO Braxton Carter).

⁹² Israel Reply Decl. ¶ 26.

⁹³ Mike Dano, *T-Mobile Reiterates Support for GoSmart Mobile, Despite MetroPCS Merger*, *FierceWireless* (Apr. 26, 2013), <http://www.fiercewireless.com/story/t-mobile-reiterates-support-gosmart-mobile-despite-metropcs-merger/2013-04-26#ixzz2f5gK3ijb>.

⁹⁴ Press Release, T-Mobile US, Inc., T-Mobile US Reports Second Quarter 2013 Results (Aug. 8, 2013), *available at* http://newsroom.t-mobile.com/phoenix.zhtml?c=251624&p=irol-newsArticle_pf&ID=1845964.

Sprint has likewise strengthened its competitive position. Already a powerful force in the prepaid/no-contract business with its Virgin Mobile and Boost brands, its recent transactions with SoftBank and Clearwire have substantially strengthened its finances and provided it with nationwide spectrum depth for 4G – and then some.⁹⁵ Even before those transactions, Sprint announced these brands “reach[ed] their best ever ARPU levels” and touted plans to expand its prepaid offerings.⁹⁶ In the second quarter of 2013, “Virgin Mobile gross adds were up 70% year-over-year,” and its year-over-year revenue growth for its prepaid platform was 20 percent.⁹⁷ In addition, Virgin Mobile recently launched the iPhone 5s and 5c, including on its low \$35/month plan,⁹⁸ at a \$100 discount off of Apple’s standard unsubsidized pricing.⁹⁹

⁹⁵ See Public Interest Statement at 6-7 (discussing Sprint’s improved financial and operational position). Indeed, SoftBank has already invested \$5 billion in Sprint, and is planning \$16 billion in capital spending over the next two years, most of which will go toward base stations for Sprint’s high-speed LTE network. Kevin Fitchard, *The SoftBank Deal Is Done: Sprint, Clearwire Officially Turn Japanese*, GigaOM (July 10, 2013), <http://gigaom.com/2013/07/10/the-softbank-deal-is-done-sprint-clearwire-officially-turn-japanese/>; Sue Marek, *SoftBank Will Invest \$16B in Sprint, Open R&D Center in Silicon Valley*, Fierce Wireless (July 8, 2013), available at <http://www.fiercewireless.com/story/softbank-will-invest-16b-sprint-open-rd-center-silicon-valley/2013-07-08>.

⁹⁶ See Sprint Nextel Corp., Q4 2012 Earnings Conference Call (Feb. 7, 2013), available at <http://www.morningstar.com/earnings/48165181-sprint-nextel-s-q4-2012.aspx>; Edward C. Baig, *Sprint CEO Talks About iPhone Decision, Other Challenges*, USA Today (Aug. 7, 2012), available at <http://usatoday30.usatoday.com/tech/news/story/2012-08-12/sprint-ceo-hesse-q-and-a/56861142/1>.

⁹⁷ Sprint Nextel Corp., 2Q13 Earnings Conference Call Presentation at 17 (July 30, 2013), available at <http://investors.sprint.com/Cache/1500051050.PDF?Y=&O=PDF&D=&fid=1500051050&T=&iid=4057219>.

⁹⁸ Angela Moscaritolo, *Virgin Mobile USA to Offer Pre-Paid iPhone 5s, 5c Oct. 1*, PCMag (Sept. 27, 2013), <http://www.pcmag.com/article2/0,2817,2424944,00.asp> (“[Virgin Mobile USA] will offer the flagship iPhone 5s and colorful iPhone 5c with unlimited data and messaging plans starting from \$35 per month, with a \$5 monthly discount possible for buyers who register for automatic payments with a credit card, debit card, or PayPal account.”).

And these are not the only carriers competing aggressively in the prepaid space. Verizon also has announced its intention to be “more aggressive” with prepaid and wholesale on its 3G network in order to “keep that network full,”¹⁰⁰ and has launched several prepaid initiatives within the past year.¹⁰¹

MVNOs also are significant providers of prepaid and value services. Although Opponents, such as Public Knowledge, disregard the competitive impact of MVNOs,¹⁰² TracFone is in fact the largest single provider of prepaid service in the country¹⁰³ with a demonstrated ability to serve customers nationally with many low-cost choices. Walmart reports that the Straight Talk brand it offers in conjunction with TracFone is the “fastest growing

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⁹⁹ Zachary Lutz, *Apple iPhone 5s and 5c Now at Virgin Mobile for \$100 Below Retail*, Engadget (Oct. 1, 2013), <http://www.engadget.com/2013/10/01/apple-iphone-5s-and-5c-now-available-at-virgin-mobile>.

¹⁰⁰ Verizon at Nomura Global Media Summit at 7 (May 30, 2013), *available at* http://www22.verizon.com/investor/DocServlet?doc=vz_nomura_transcript_2013.pdf.

¹⁰¹ In 2013 alone, Verizon launched several prepaid rate plan initiatives, including introducing new rate plans and offering more data in some of its “all you can eat” plans for the same price. See Brian Malina, Verizon Wireless, Verizon Wireless News Center, *Smartphone Options for the Budget-Minded (update)* (May 15, 2013), <http://news.verizonwireless.com/news/2013/02/new-prepaid-smartphone-plans.html>; Lance Whitney, *Verizon Unveils \$35 Prepaid Mobile Phone Plan*, CNET News (Apr. 12, 2013), [http://news.cnet.com/8301-1035_3-57579264-94/verizon-unveils-\\$35-prepaid-mobile-phone-plan](http://news.cnet.com/8301-1035_3-57579264-94/verizon-unveils-$35-prepaid-mobile-phone-plan).

¹⁰² Public Knowledge Petition at 16 (noting that MVNOs and resellers like TracFone “are not considered ‘market participants’”).

¹⁰³ TracFone has an estimated [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION] percent share of prepaid customers nationally. See August 20, 2013 Letter, Exhibit 8. See also *Tracfone, Why Tracfone*, http://www.tracfone.com/facelift/tour.jsp#a_whytrac (last visited Oct. 3, 2013) (“TracFone is America’s #1 National No-Contract Wireless service provider.”).

segment” of its wireless business.¹⁰⁴ TracFone has a range of offerings, some of which include high-end devices and LTE network service. It has over four times the number of subscribers Leap has, and analysts attribute TracFone’s 1Q 2013 jump in subscribers and revenue to Straight Talk’s iPhone 5 launch.¹⁰⁵ And many other MVNOs are also competitors. For example, leading discount retailer Target has just announced that it is launching its own prepaid mobile brand, named Brightspot, that will use T-Mobile’s network.¹⁰⁶ Brightspot offers unlimited talk and text plans starting at \$35 per month, and a “robust selection of phones.”¹⁰⁷

In contrast, as previously described, Leap has a limited geographic footprint, has seen its customer base shrink dramatically, and is unable to offer the 4G LTE service that is increasingly available on a wider scale and at faster speeds from its principal competitors.¹⁰⁸ Leap has seen its share of prepaid subscribers fall even faster than its rapidly declining share of the wireless market.¹⁰⁹ The combined company will be a stronger competitor than Leap would be by itself, as

¹⁰⁴ Phil Goldstein, *Walmart Exec: TracFone’s Straight Talk is ‘One of the Best-Kept Secrets’ in Wireless*, FierceWireless (May 23, 2013), <http://www.fiercewireless.com/story/walmart-exec-tracfones-straight-talk-one-best-kept-secrets-wireless/2013-05-23#ixzz2dCVTMXhQ> (quoting Gibu Thomas, global head of mobile at Walmart).

¹⁰⁵ Kevin Fitchard, *As Straight Talk Starts Selling the iPhone, TracFone Sees Jump in Subscribers, Revenue*, GigaOM (Apr. 19, 2013), <http://gigaom.com/2013/04/19/as-straight-talk-starts-selling-the-iphone-tracfone-sees-jump-in-subscribers-revenue> (“Prepaid mobile giant TracFone had a massive quarter, adding 839,000 subscribers and even beating out Verizon Wireless. TracFone didn’t say why, but not coincidentally its Straight Talk brand and partner Walmart began selling the iPhone 5.”).

¹⁰⁶ Chloe Albanesius, *Target Enters Pre-Paid Market with ‘Brightspot’*, PCMag.com, Oct. 3, 2013, <http://www.pcmag.com/article2/0,2817,2425170,00.asp>. See also Target, *Finding the ‘Brightspot’: Target Makes Pre-paid Mobile a Priority, a bullseye view* (last visited Oct. 3, 2013), <http://abullseyeview.com/target-launches-brightspot-prepaid-mobile-program>.

¹⁰⁷ See Albanesius, *Target Enters Pre-Paid Market with ‘Brightspot’*, *supra*.

¹⁰⁸ Israel Reply Decl. ¶ 23.

¹⁰⁹ *Id.* ¶ 21.

it will be better positioned to go toe to toe with the other providers. Competition in prepaid services will be more intense throughout the country, but especially so in the majority of the country where Leap does not have a network and does not meaningfully compete. Consumers in those areas, in particular, will benefit from AT&T expanding the Cricket brand nationwide, making Cricket “available as an additional option.”¹¹⁰ Like T-Mobile’s acquisition of MetroPCS, this transaction will provide increased competition in the marketplace.

Claims that AT&T and Leap are close competitors are simply belied by the facts. Analysis of porting data shows that diversion from AT&T to Leap and diversion from Leap to AT&T is less than would be predicted by the parties’ relative shares.¹¹¹ It follows that unilateral anticompetitive effects will not result from the transaction.¹¹²

Youghioghney attempts to dismiss these data by theorizing that perhaps Leap’s former customers “have tended to find the services offered by AT&T’s competitors better suited to their needs than are those of AT&T[.]”¹¹³ But that explanation only concedes what Youghioghney disputes: that AT&T and Leap are not close competitors.

The reality that AT&T and Leap are not close competitors only underscores the procompetitive impact this transaction will have on competition, regardless of how broadly or narrowly the market is defined. As a matter of basic economics and Commission and antitrust

¹¹⁰ *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2348 ¶ 74.

¹¹¹ Israel. Decl. ¶¶ 27-28.

¹¹² See Israel Decl. ¶ 25 (“[A] lower diversion ratio means that the firms in question are not particularly close competitors, thus limiting any competitive concerns.”).

¹¹³ IAE Decl. at 14.

precedent, a merger between firms whose products are not close substitutes will not lead to unilateral anticompetitive effects even when the firms are in the same product market.¹¹⁴

D. Concerns About The Loss of “Potential” Competition by Aio Are Unfounded

Finally, Greenlining’s argument that the transaction will eliminate AT&T’s Aio service as a “potential[]” competitor¹¹⁵ is unfounded. Indeed, Greenlining’s suggestion that the transaction eliminates *both* Leap and Aio¹¹⁶ is flatly incorrect: AT&T has made clear that, “after the transaction’s close, AT&T intends to combine the nascent operations of Aio with Leap’s existing operations under the Cricket brand name.”¹¹⁷ In other words, AT&T will continue to

¹¹⁴ *Applications of Nextel Commc’ns, Inc. & Sprint Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13,967, 14,003 ¶ 96 (2005) (“*Sprint/Nextel Order*”) (“[I]f most customers consider [the applicants] to be more distant substitutes for each other, or have multiple choices of equally attractive substitutes, then anticompetitive unilateral effects are less likely to occur or may be less significant.”); *Applications of W. Wireless Corp. & Alltel Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13,053, 13,078 ¶ 60 (2005) (stating same); see also U.S. Dep’t of Justice and Fed. Trade Comm’n, Horizontal Merger Guidelines § 6.1 (2010) (“The extent of direct competition between the products sold by the merging parties is central to the evaluation of unilateral price effects. . . . Substantial unilateral price elevation post-merger . . . normally requires that a significant fraction of the customers purchasing that product view products formerly sold by the other merging firm as their next-best choice.”). As Dr. Israel explains, where there is some degree of substitutability between products, such that they compete against each other to some degree, but the products are differentiated such that few customers view those products as next-best substitutes for each other, one can have a single relevant market with low diversion between the two products. Thus, there is no inconsistency between a finding that there is a combined wireless telephony/mobile broadband market in which Leap and AT&T both participate but, at the same time, little head-to-head competition between the two and thus little prospect of unilateral anticompetitive effects. Israel Reply Decl. ¶¶ 34-36.

¹¹⁵ See Greenlining Petition at 9-10,18.

¹¹⁶ See *id.*

¹¹⁷ August 20, 2013 Letter at 2; see also Public Interest Statement at 7 (“The proposed transaction will expand and improve the service offerings available under the Cricket brand . . .

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build and expand its value offerings, and the transaction simply accelerates and strengthens the competitive effect of those offerings by allowing AT&T to integrate Leap's assets and expand the Cricket brand nationwide. In any event, Aio is a start-up business with very few customers today,¹¹⁸ and its recent entry has not had any measurable impact on the structure of the wireless market. Just as T-Mobile's acquisition of MetroPCS was found by the Bureaus to be in the public interest¹¹⁹ even after T-Mobile had launched a new prepaid "flanker brand" (GoSmart), the combination of the nascent Aio and established Cricket businesses to create a nationwide effective competitor is likewise in the public interest.

E. The Transaction Will Not Harm Competition in Any Local Market

The transaction will not harm competition in any local area, contrary to the claims of Opponents, for many of the same reasons it will not harm competition at the national level. Most importantly, all of the national competitors are present and competing in the vast majority of the CMAs that Leap serves. As the Bureaus found in the *T-Mobile/MetroPCS Order*, this helps ensure vigorous competition will continue.¹²⁰ And Leap's declining presence in the CMAs in which it operates demonstrates its current market share overstates its current, and especially its future, competitive prospects.¹²¹ Moreover, as Dr. Israel explains, the predominance of national

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and will enable the combined company to offer high-quality nationwide, facilities-based prepaid/no-contract services more effectively.").

¹¹⁸ Moore Decl. ¶ 10.

¹¹⁹ *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2348 ¶ 74 (finding that the transaction would result in "meaningful public interest benefits").

¹²⁰ *T-Mobile/MetroPCS Order*, 28 FCC Rcd at 2339 ¶¶ 51-52.

¹²¹ It is well-settled that if a firm's current market position overstates its future competitive significance, analysis of a transaction should be based on the firm's future ability to compete.

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pricing greatly diminishes the relevance of local shares, and the absence of significant nationwide competitive effects minimizes concerns in any particular CMA.¹²²

Opponents offer no evidence to rebut these important facts about local competition. Two Opponents, however, have made claims concerning specific local areas, which are addressed below.

1. Competition will remain robust in South Texas

Youghioghenny¹²³ claims the transaction will harm competition in South Texas, but fails to present any relevant supporting evidence.¹²⁴ Contrary to Youghioghenny's unsupported claims,

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See, e.g., U.S. Dep't of Justice and Fed. Trade Comm'n, Horizontal Merger Guidelines § 5.2 (2010) ("Market concentration and market share data are normally based on historical evidence. However, recent or ongoing changes in market conditions may indicate that the current market share of a particular firm either understates or overstates the firm's future competitive significance. . . . The Agencies measure market shares based on the best available indicator of firms' future competitive significance in the relevant market."); *United States v. Gen. Dynamics Corp.*, 415 U.S. 486, 503-04 (1974) (finding that the District Court properly assessed a coal producer's "weakness as a competitor" when it analyzed the firm's "probable future ability to compete" rather than its past production, and concluded that it was a "far less significant factor in the coal market than . . . the production statistics seemed to indicate").

¹²² Israel Reply Decl. ¶ 59.

¹²³ Youghioghenny and its affiliates formerly provided wireless telecommunications services in South Texas under the trade name Pocket Communications ("Pocket"). In 2010, substantially all of Youghioghenny and its affiliates' assets relating to the Pocket business in South Texas were contributed to a Leap-controlled joint venture in which Youghioghenny retains a 24.25 percent non-controlling membership interest. *See* ULS File Nos. 0004169410 and 0004169437, Exhibit 1, Description of Transaction and Public Interest Statement at 1 (consummated Oct. 1, 2010); Press Release, Leap Wireless International, Inc., Leap Wireless and Pocket Communications Complete Formation of Joint Venture to Provide Expanded South Texas Region Mobile Communications Services (Oct. 1, 2010), *available at* <http://newsroom.leapwireless.com/Press-Releases/Leap-Wireless-and-Pocket-Communications-Complete-Formation-of-Joint-Venture-to-Provide-Expanded-Sout-377.aspx>; Strickland Decl. ¶ 6.

¹²⁴ Youghioghenny asserts that Leap and Pocket competed fiercely against each other in this region before they combined their businesses in a joint venture three years ago, but does not show how this outdated evidence relates to the transaction at hand. Youghioghenny Petition at 16.

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wireless competition in South Texas will continue to be vibrant after the transaction.¹²⁵ All four national carriers are and will remain present in the region, ensuring that there will be a sufficient number of effective competitors post-transaction.¹²⁶

As Youghioghenny admits, Sprint is a very strong competitor in South Texas, “besting or running neck and neck with AT&T” in various South Texas areas.¹²⁷ Sprint has an estimated

[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** percent share of subscribers in the region, which is more than a **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** share points above its national average, and Sprint’s estimated share exceeds **[BEGIN AT&T HIGHLY CONFIDENTIAL**

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At the time, Mr. Posner of Youghioghenny claimed that the combination of Pocket’s business with that of Leap was procompetitive, stating: “These enhanced offerings will allow the combined operations to compete even more effectively against other flat-rate wireless operators in the area.” Press Release, Leap Wireless International, Inc., Leap Wireless and Pocket Communications to Form Joint Venture to Provide Expanded South Texas Region Mobile Communications Services (Feb. 23, 2010), *available at* <http://newsroom.leapwireless.com/Press-Releases/Leap-Wireless-and-Pocket-Communications-to-Form-Joint-Venture-to-Provide-Expanded-South-Texas-Region-38b.aspx>. The Commission found the joint venture to be in the public interest. *See Int’l Authorizations Granted*, Public Notice, 25 FCC Rcd 8460 (IB rel. 2010), *Wireless Telecommc’ns Bureau Assignment of License Authorization Applications, Transfer of Control of License Applications, De Facto Transfer Lease Applications & Spectrum Manager Lease Notifications, Designated Entity Reportable Eligibility Event Applications, & Designated Entity Annual Reports Action*, Public Notice, Rpt No. 6049, 2010 WL 2780758 (WTB rel. Jul. 14, 2010).

¹²⁵ Both Sprint and T-Mobile have over **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** percent estimated shares of subscribers in each of the five CMAs in South Texas. Israel Reply Decl. at app. 2.

¹²⁶ These carriers all have ample spectrum to support their customers and expand service in the region as needed. Israel Reply Decl. ¶ 61.

¹²⁷ Youghioghenny Petition at 15.

INFORMATION] **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** percent in all of the South Texas CMAs.¹²⁸

South Texas is also one of the areas where T-Mobile has launched its expansion of MetroPCS.¹²⁹ T-Mobile now has over 200 MetroPCS retail locations in South Texas,¹³⁰ with plans for more.¹³¹ This aggressive expansion is targeted specifically at Leap customers,¹³² and T-Mobile is prepared to use its MetroPCS brand to compete aggressively with AT&T post-transaction.¹³³ Analysis of Leap porting data demonstrates the success of T-Mobile's strategy;

¹²⁸ Israel Reply Decl. ¶ 61 & app. 2. Sprint's estimated share of subscribers exceeds **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** percent in all five South Texas CMAs, and exceeds **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** percent in two of these CMAs: 128-McAllen-Edinburg-Mission, TX **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** and 162-Brownsville-Harlingen, TX **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]**. Israel Reply Decl. at app. 2.

¹²⁹ See Press Release, T-Mobile US, Inc., MetroPCS Takes On New Markets, *supra* (announcing plans to expand MetroPCS in Corpus Christi, San Antonio, and the Rio Grande Valley). Moreover, T-Mobile has expanded MetroPCS into other nearby areas, including Austin and Houston. *Id.*

¹³⁰ This includes 83 MetroPCS retail locations in CMA 033-San Antonio, TX; 18 locations in CMA 112-Corpus Christi, TX; 47 locations in CMA 128-McAllen-Edinburg-Mission, TX; 42 locations in CMA 162-Brownsville-Harlingen, TX; and 14 locations in CMA 281-Laredo, TX. See MetroPCS, Store Locator, <http://www.metropcs.com/metro/maps/storelocator.jsp> (last visited Oct. 3, 2013); Israel Reply Decl. at app. 2.

¹³¹ See Press Release, T-Mobile US, Inc., MetroPCS Takes On New Markets, *supra* ("The company continues to expand its distribution channels in the newly launched cities . . .").

¹³² T-Mobile CEO John Legere described the expansion as "T-Mobile network, T-Mobile devices, *Leap customers*." Marek, *T-Mobile CEO Hints at New Prepaid Plan*, *supra* (emphasis added).

¹³³ T-Mobile Chief Marketing Officer Mike Sievert explained that the MetroPCS expansion "gets us into those Leap Markets now, arriving months in advance of AT&T." Moritz, *T-Mobile Adds 15 MetroPCS Cities*, *supra*. In addition, MetroPCS recently launched Mexico Total, a promotion offering unlimited calling to Mexico-based landlines, which is particularly relevant in

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there has been a notable increase in Leap port-outs to T-Mobile/MetroPCS in the South Texas CMAs since MetroPCS's launch.¹³⁴

While its principal competitors are strong and growing stronger, the general decline in Leap's business also is evident in South Texas, making any competitive concerns based on the merger speculative at best. Between March 31, 2012 and June 30, 2013, Leap's estimated share of subscribers **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]**

[END AT&T HIGHLY CONFIDENTIAL INFORMATION] South Texas CMAs.

During that time, Leap lost **[BEGIN LEAP HIGHLY CONFIDENTIAL INFORMATION]**

[END LEAP HIGHLY CONFIDENTIAL INFORMATION] percent of its subscribers in South Texas, which equates to a **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]**

percent decline in its estimated share of subscribers.¹³⁵

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South Texas, where several CMAs border Mexico. See Press Release, MetroPCS, MetroPCS Connects Friends and Family to Mexico with Affordable International Calling Promotion (Sept. 3, 2013), available at <http://www.metropcs.com/assets/presscenter/assets/pdf/mpcs-news-20130903.pdf>.

¹³⁴ Leap porting data show a notable increase in port-outs to T-Mobile/MetroPCS in the areas newly served by MetroPCS, which include the following South Texas cities: **[BEGIN LEAP HIGHLY CONFIDENTIAL INFORMATION]**

[END LEAP HIGHLY CONFIDENTIAL INFORMATION] Israel Reply Decl. ¶¶ 26 & Fig. 2, 61 n.100.

¹³⁵ *Id.* ¶ 21. Between March 2012 and June 2013, Leap's estimated total subscribers in the South Texas CMAs dropped by **[BEGIN LEAP HIGHLY CONFIDENTIAL INFORMATION]**

[END LEAP HIGHLY CONFIDENTIAL INFORMATION] percent, while total subscribers of all carriers in those CMAs increased by an estimated **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** percent. Leap lost more than **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** percent of its estimated share of subscribers in three

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In short, given this evidence of strong local competition in South Texas, including increasing competition among prepaid brands, and the diminishing significance of Leap, there is no basis to conclude that the transaction will harm competition in any local market in the area.¹³⁶

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South Texas CMAs: 033-San Antonio, TX [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION] of estimated subscriber share lost); 112-Corpus Christi, TX [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION]; and 281-Laredo, TX [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION] Israel Reply Decl. ¶ 21 n.48. In addition, Leap lost more than [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION] percent of its estimated share of subscribers in the following nearby CMAs: 010-Houston, TX [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION]; 075-Austin, TX [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION]; 160-Killeen-Temple, TX [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION]; 170-Galveston-Texas City, TX [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION]; 300-Victoria, TX [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION]; 666-Texas 15 - Concho [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION]; 669-Texas 18 - Edwards [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION]; and 671-Texas 20 - Wilson [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION]. *Id.*

¹³⁶ Although the above discussion addresses the five CMAs that Information Age Economics identifies as “comprising” South Texas, the same broad conclusions about competition would apply if a broader definition of “South Texas” were used. For example, considering instead all 11 Texas CMAs listed in Information Age Economics’ Appendix B, *see* IAE Decl. at 31-32, app. B, it is still the case that Sprint is a strong competitor (with an estimated [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION] percent share across the 11 CMAs) and that Leap has experienced a pronounced decline in the region. Israel Reply Decl. ¶ 61 n.100. Between March 2012 and June 2013, Leap’s estimated subscriber share [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION] of these 11 CMAs, and Leap lost [BEGIN LEAP

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2. There is no cause for competitive concerns in San Diego and the California Central Valley

Greenlining's Petition expresses concern about the competitive effects of the transaction in San Diego and California's Central Valley,¹³⁷ but offers neither an explanation nor any evidence supporting such concerns. To the contrary, competition will continue to be strong in these areas. At a minimum, all four nationwide carriers will continue to compete and have sufficient spectrum to expand service, and MVNOs will continue to compete as well.¹³⁸ For example, Sprint has a significant share of subscribers in every one of these CMAs, and T-Mobile's estimated share is approximately [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION] percent or greater in the San Diego, Fresno, Modesto, and Madera CMAs.¹³⁹ T-Mobile has also introduced MetroPCS service in San Diego and the Fresno area,¹⁴⁰ thus intensifying competition in value-conscious offerings. MetroPCS, which already had a strong presence in Modesto, recently has added at least 40 retail locations in the Central Valley, and has almost 100 retail

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HIGHLY CONFIDENTIAL INFORMATION [END LEAP HIGHLY CONFIDENTIAL INFORMATION] percent of its subscribers across the region. *Id.*

¹³⁷ Greenlining states that "[t]he California counties within the Central Valley are San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare, and Kern," Greenlining Petition at 9 n.36, which comprise all or part of seven CMAs. Leap has [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION] estimated subscriber share in two of these CMAs: 097-Bakersfield, CA and 107-Stockton, CA. Israel Reply Decl. ¶ 57 n.98. The discussion below addresses the remaining five CMAs: 074-Fresno, CA (Fresno County); 142-Modesto, CA (Stanislaus County); 150-Visalia-Tulare-Porterville, CA (Tulare County); 339-California 4 - Madera (Merced and Madera Counties); and 347-California 12 - Kings (Kings County).

¹³⁸ Israel Reply Decl. ¶ 61.

¹³⁹ *Id.* at app. 2.

¹⁴⁰ See Press Release, T-Mobile, MetroPCS Takes on New Markets, *supra*.

locations in the San Diego CMA, another area it did not previously serve.¹⁴¹ There is clearly no basis for any competitive concern in these California CMAs.

IV. NO ROAMING CONDITIONS SHOULD BE IMPOSED

The Commission should reject Opponents' various requests for roaming conditions.¹⁴² Despite Opponents' suggestions to the contrary, Leap simply is not a significant provider of roaming services, and alternative roaming providers exist across virtually all of Leap's network footprint, with the exception of some extremely small pockets.¹⁴³ While Leap depends on other wireless carriers for roaming outside of its network footprint, relatively few carriers have customers who roam on Leap's network extensively.¹⁴⁴ Thus, this transaction stands in stark

¹⁴¹ See MetroPCS, Store Locator, <http://www.metropcs.com/metro/maps/storelocator.jsp> (last visited Oct. 6, 2013); Israel Reply Decl. at app. 2.

¹⁴² NTCH Petition at 3-4; CCA Petition at 16-18; Youghioghenny Petition at 14; RWA Comments at 9-11.

¹⁴³ Strickland Decl. ¶ 3.

¹⁴⁴ *Id.* For example, in June 2013, only three carriers purchased more than \$5,000 per month of Leap voice roaming service, and only two carriers purchased more than \$5,000 per month of data roaming service. *Id.* Notably, although NTCH claims that Leap is an important roaming partner, NTCH Petition at 2, it receives an insignificant amount of roaming services from Leap. NTCH roams on Leap's network **[BEGIN LEAP HIGHLY CONFIDENTIAL INFORMATION]**

[END LEAP HIGHLY CONFIDENTIAL INFORMATION] (AT&T is not acquiring this equity interest in the transaction. See Public Interest Statement at 2 n.7.) The amount of NTCH roaming traffic under this arrangement is insignificant. Strickland Decl. ¶ 4. Contrary to one Opponent's suggestion, see Youghioghenny Petition at 12, Leap generally does not participate in bill-and-keep roaming arrangements, except in certain instances for text message traffic or where traffic between the respective parties is symmetrical. Strickland Decl. ¶ 4.

contrast with those cited by CCA where the Commission has imposed roaming conditions to ease the loss of an important provider of roaming services in particular geographic areas.¹⁴⁵

Post-closing, roaming alternatives will continue to exist throughout Leap's network footprint for CDMA carriers. For example, both Verizon Wireless and Sprint have CDMA networks in the vast majority of affected areas, and, according to Leap's calculations, together cover 98.3 percent of Leap's coverage footprint.¹⁴⁶ According to Leap's calculations, Verizon's network overlaps 94.7 percent of Leap's network and Sprint's network overlaps 84.9 percent of Leap's network.¹⁴⁷ Only 1.7 percent of Leap's network does not overlap with either.¹⁴⁸ Additional CDMA carriers also operate in many of these areas while others hold spectrum but currently do not provide service.¹⁴⁹ Given Leap's insignificance as a roaming provider and the existence of adequate CDMA alternatives, there is no basis for Opponents' request that the

¹⁴⁵ *AT&T/ATNI Order* ¶¶ 95-96; *Applications of AT&T Inc. & Cellco P'ship d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses & Authorizations & Modify a Spectrum Leasing Arrangement*, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8746 ¶ 96 (2010); *Applications of AT&T Inc. & Centennial Commc'ns Corp. for Consent to Transfer Control of Licenses, Authorizations, & Spectrum Leasing Arrangements*, Memorandum Opinion and Order, 24 FCC Rcd 13,915, 13,967 ¶ 129 (2009) ("*AT&T/Centennial Order*"); *Verizon/ALLTEL Order*, 23 FCC Rcd at 17,524 ¶ 178.

¹⁴⁶ Strickland Decl. ¶ 5.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* In addition to Verizon and Sprint, several other CDMA carriers hold spectrum or provide service in Leap's spectrum footprint, including Appalachian Wireless, Bluegrass Cellular, Carolina West Wireless, Cellcom, nTelos Wireless, Revol Wireless, Syringa Wireless, and US Cellular. See Public Interest Statement, Exhibit B (Competitors Spectrum Chart); August 20, 2013 Letter, Exhibit 1 (Revised Spectrum Aggregation Chart); Cell Phone Forums, Info: List of US CDMA Carriers, <http://cellphoneforums.net/general-service-provider-forum/t349387-list-us-cdma-carriers.html> (last visited Oct. 6, 2013).

Commission impose roaming conditions or mandate the maintenance of Leap's CDMA network for any period of time.¹⁵⁰

To the extent Opponents complain more broadly about roaming issues in general, they assert an industry-wide concern that is not transaction-specific. The Commission repeatedly has reminded CCA, RWA, and others that it will not consider claims of non-transaction-specific harms in reviewing a transaction.¹⁵¹ Furthermore, the Wireless Telecommunications and International Bureaus just last month found "that the Commission's general roaming policies and rules should ensure that entities can obtain roaming agreements on reasonable terms and conditions. In the event that a service provider . . . encounters difficulties in obtaining desired roaming services under our rules and policies, it can file complaints with the Commission pursuant to our established roaming rules."¹⁵² The Bureaus concluded that the roaming conditions proposed by RWA, among others, "are not narrowly tailored to remedy any purported

¹⁵⁰ The Commission also should reject Youghioghenny's request for AT&T to rebuild Leap's CDMA network because it contains Huawei equipment. *See Youghioghenny Petition* at 24. This transaction will eliminate any security concerns by transitioning Leap's customers and decommissioning Leap's CDMA network. Sprint was given two and one-half years to replace its Huawei and ZTE equipment, *Sprint/SoftBank Order*, 28 FCC Rcd at 9694-95 ¶ 127, and AT&T will decommission Leap's CDMA network in less time. To the extent the Commission is concerned about the Huawei equipment, that is yet another reason why it should not impose any roaming conditions that might delay AT&T's transition plans.

¹⁵¹ The Commission will "impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms). . . ." *AT&T/Centennial Order*, 24 FCC Rcd at 13,969 ¶ 133 (rejecting CCA's request for roaming conditions that were not transaction-specific). *See also AT&T/ATNI Order* ¶ 59 (rejecting RWA's request for roaming conditions that were not transaction-specific); *Sprint/Clearwire Order*, 23 FCC Rcd at 17,606 ¶ 92 (rejecting CCA's request for roaming conditions that were not transaction-specific).

¹⁵² *AT&T/ATNI Order* ¶ 59.

harms arising out of [the AT&T/ATNI] transaction” and did not impose them.¹⁵³ The same result should obtain here.¹⁵⁴

V. THE COMMISSION SHOULD ADHERE TO PRECEDENT AND REJECT THE OTHER REQUESTED CONDITIONS

Commission precedent requires the rejection of the other conditions requested by RWA, Youghioghenny, Broadvox, and Infrastructure. These Opponents ask the Commission to impose conditions to remedy alleged harms that are not transaction-specific (and also have been resolved or do not actually exist) and to adjudicate a private contractual dispute as part of the public interest analysis in this proceeding.¹⁵⁵ The Commission’s prior decisions demand that it rebuff each of these requests.

While CCA recognizes that the recent compromises by the various stakeholders have laid to rest the Lower 700 MHz device interoperability issue,¹⁵⁶ others, including RWA and

¹⁵³ *Id.*

¹⁵⁴ In any event, as a net purchaser of roaming services, *see Annual Report & Analysis of Competitive Mkt. Conditions with Respect to Mobile Wireless, Including Commercial Mobile Servs.*, WT Dkt No. 11-186, Reply Comments of AT&T Inc. at 18 (filed Dec. 20, 2011), AT&T has a strong interest in commercially reasonable roaming rates, terms, and conditions. Indeed, AT&T had negotiated voice and data roaming agreements of one form or another with almost all of the U.S. wireless providers that market handsets compatible with AT&T’s networks even before the Commission promulgated its data roaming rules, and, since the data roaming rules were promulgated, AT&T has negotiated even more. AT&T will have the same incentive and ability to provide data roaming on commercially reasonable terms before and after this transaction.

¹⁵⁵ Youghioghenny Petition at 4, 28, 33; RWA Comments at 9, 11; Infrastructure Petition at 4-7; Broadvox Petition at 17-18.

¹⁵⁶ CCA Petition at 14 n.44 (“CCA is confident that the Commission will implement the various commitments made by stakeholders in the interoperability docket . . . well in advance of a decision on this transaction.”).

Youghioghenny, do not.¹⁵⁷ Both Opponents ask the Commission for an unnecessary interoperability condition.¹⁵⁸ Yet, wholly apart from the fact that the 700 MHz interoperability issue is being resolved by compromise, it has nothing to do with this transaction¹⁵⁹ as AT&T is not acquiring any 700 MHz spectrum from Leap.¹⁶⁰ Without a grounding in the facts of this transaction, Commission precedent precludes consideration of an interoperability condition.¹⁶¹

Despite Broadvox's attempt to bootstrap a connection between various access charge payment disputes with AT&T and this proceeding,¹⁶² the issues Broadvox seeks to inject here are not remotely transaction-specific and implicate numerous industry participants beyond AT&T.¹⁶³ Moreover, Broadvox is litigating its disputes with AT&T in other Commission proceedings and

¹⁵⁷ See Youghioghenny Petition at 4, 24-25, 28, 33; IAE Decl. at 12; RWA Comments at 9, 11.

¹⁵⁸ Youghioghenny Petition at 4, 28, 33; RWA Comments at 9, 11.

¹⁵⁹ RWA's request for a device unlocking requirement suffers from the same defect. See RWA Comments at 9, 11. There is no plausible claim that unlocking is a transaction-specific issue.

¹⁶⁰ Although AT&T will obtain *de jure* control over Leap's Lower 700 MHz A Block license in Chicago, AT&T will not obtain *de facto* control, and this license will be sold for the benefit of Leap's shareholders. See Public Interest Statement at 3.

¹⁶¹ See, e.g., *AT&T/ATNI Order* ¶ 63 (declining to impose conditions regarding interoperability, handset exclusivity, early termination fees, special access, and backhaul that were "not narrowly tailored to remedy any purported harms arising out of [the] transaction"); *Applications of Cellco P'ship d/b/a Verizon Wireless & SpectrumCo LLC & Cox TMI, LLC for Consent to Assign AWS-1 Licenses*, Memorandum Opinion and Order and Declaratory Ruling, 27 FCC Rcd 10,698, 10,732 ¶ 89 (2012) (declining to impose interoperability condition); *Application of AT&T Inc. & Qualcomm Inc. for Consent to Assign Licenses & Authorizations*, Order, 26 FCC Rcd 17,589, 17,620 ¶¶ 71-72 (2011) (same).

¹⁶² See Broadvox Petition *passim*.

¹⁶³ See *Sprint/SoftBank Order*, 28 FCC Rcd at 9675-76 ¶¶ 83-85 (intercarrier compensation dispute between Sprint, nWire, LLC, Pac-West Telecomm, Inc., and Tex-Link Communications, Inc.); see also Letter from Michel Singer Nelson, Vice President of Regulatory and Public Policy, O1 Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt No. 10-90 (filed Aug. 22, 2013) (describing intercarrier compensation dispute among O1 Communications, Inc., Verizon, and AT&T).

before the courts.¹⁶⁴ Thus, these disputes are precisely the type of “arguments . . . that are better addressed in other Commission proceedings, or other legal fora,”¹⁶⁵ as the Commission concluded regarding similar disputes in its *Sprint/SoftBank Order*.¹⁶⁶

Precedent also compels the Commission to refuse Infrastructure’s plea to intervene in a private contractual dispute related to Infrastructure’s spectrum leases with Leap.¹⁶⁷ Moreover, Infrastructure’s assertion that the spectrum leases between Infrastructure and Leap and its affiliates contain provisions allowing them to be terminated if control of the underlying spectrum is transferred is incorrect.¹⁶⁸ Instead, both spectrum leases give either party the right to terminate all or a portion of the spectrum usage rights thereunder at any time after November 2013 on six months’ notice to the other party.¹⁶⁹ Therefore, even in the absence of the proposed AT&T/Leap transaction, beginning in November 2013, Leap has the unilateral right to give Infrastructure a notice of termination at any time and end the leases six months thereafter in accordance with the

¹⁶⁴ See Broadvox Petition at 2 & n.3 (citing *Technological Transition of the Nation’s Commc’ns Infrastructure*, GN Dkt No. 12-353, Comments of Broadvox, Inc., at 2 (filed Jan. 28, 2013)); 6-7 (discussing pending litigation between Broadvox and AT&T regarding access charge payment); 16 & n.38 (citing to *Connect America Fund*, Report and Order, 26 FCC Rcd 17,663 (2011), *on appeal*, AT&T Principal Brief, *In re: FCC 11-161*, No. 11-9900 (10th Cir. July 16, 2013)).

¹⁶⁵ *Applications of Craig O. McCaw & Am. Tel. & Tel. Co. for Consent to the Transfer of Control of McCaw Cellular Commc’ns, Inc. & Its Subsidiaries*, Memorandum Opinion and Order, 9 FCC Rcd 5836, 5904 ¶ 123 (1994), *aff’d*, *SBC Commc’ns Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995); *see also AT&T/Centennial Order*, 24 FCC Rcd at 13,967 ¶ 128.

¹⁶⁶ *Sprint/SoftBank Order*, 28 FCC Rcd at 9675-76 ¶¶ 83-85 (finding that intercarrier compensation disputes raised by CLECs were not merger-specific, were based on prior conduct by Sprint, and were more appropriately resolved through the contractual provisions between the parties or through the Commission’s Section 208 complaint process).

¹⁶⁷ See Infrastructure Petition *passim*.

¹⁶⁸ *Id.* at 3-4.

¹⁶⁹ Strickland Decl. ¶ 7.

terms freely negotiated between Infrastructure and Leap in May 2013.¹⁷⁰ Infrastructure now wants the Commission to rewrite its agreements with Leap. However, the Commission repeatedly has held that private contractual disputes are “not relevant to our public interest analysis” and are “best resolved by the parties, or in courts of competent jurisdiction.”¹⁷¹ The Commission should do so here too.¹⁷²

¹⁷⁰ *Id.*

¹⁷¹ *Sprint/Nextel Order*, 20 FCC Rcd at 14,033-34 ¶¶ 180-81; *see, e.g., Verizon/ALLTEL Order*, 23 FCC Rcd at 17,538 ¶ 214 (refusing to consider the question of whether the transaction would violate existing reseller agreements because that constituted a private contractual dispute); *Applications of AT&T Wireless Servs. Inc. & Cingular Wireless Corp. for Consent to Transfer Control of Licenses & Authorizations*, Order on Reconsideration, 20 FCC Rcd 8660, 8664-65 ¶ 13 n.27 (2005) (finding issue raised by commenter was a private contractual dispute and not relevant to the Commission’s public interest analysis); *Applications of AT&T Wireless Servs., Inc. & Cingular Wireless Corp. for Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd 21,522, 21,551 ¶ 56 n.222 (2004) (finding dispute over partnership rights involved a private contractual matter and was not relevant to a public interest analysis).

¹⁷² In all events, the asserted reasons Infrastructure offers for such special treatment are unfounded. There are a number of potential alternatives available to meet its needs through spectrum leasing or wholesale services, as well as other potential alternative providers of LTE services for the oil and gas industry. Contrary to Infrastructure’s claim, plenty of “other suitable spectrum” is “available in the same geographic area for Infrastructure’s use.” *See* Infrastructure Petition at 2. In all but two of the counties where Infrastructure is leasing spectrum from Leap, Sprint is the largest holder of spectrum that is suitable and available for mobile services – typically, by a wide margin. In each county, at least five other companies hold spectrum in addition to Sprint, Leap, and AT&T. Also, Sprint and Clearwire have marketed wholesale services actively. *See* Sprint Corp., Quarterly Report (Form 10-Q), at A-26 (Aug. 5, 2013); Clearwire Corp., Annual Report (Form 10-K), at 2, 11, 13 (Feb. 14, 2013). One licensee present in most of these counties, Texas Energy Network, competes directly with Infrastructure to serve the oil and gas industry in the Eagle Ford Shale. *See* Molly Ryan, *Houston Companies Look to Deliver Cutting-Edge 4G LTE Technology to Remote, Oil-Rich Areas*, Hous. Bus. J. (June 15, 2012), available at <http://www.bizjournals.com/houston/print-edition/2012/06/15/houston-companies-look-to-deliver.html> (noting that Texas Energy Network competes with Infrastructure). Thus, it clearly would not be in the public interest to grant Infrastructure’s request and impede AT&T’s ability to deliver the benefits of this transaction. *See* August 20, 2013 Letter, Exhibits 4 and 5 (**BEGIN AT&T HIGHLY CONFIDENTIAL**

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VI. CONCLUSION

For the reasons set forth above, in the Public Interest Statement and the August 20, 2013 Letter, the Commission should dismiss or deny the filings made in opposition to the proposed transaction and promptly grant the Applications without conditions.

Respectfully submitted,

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[END AT&T HIGHLY

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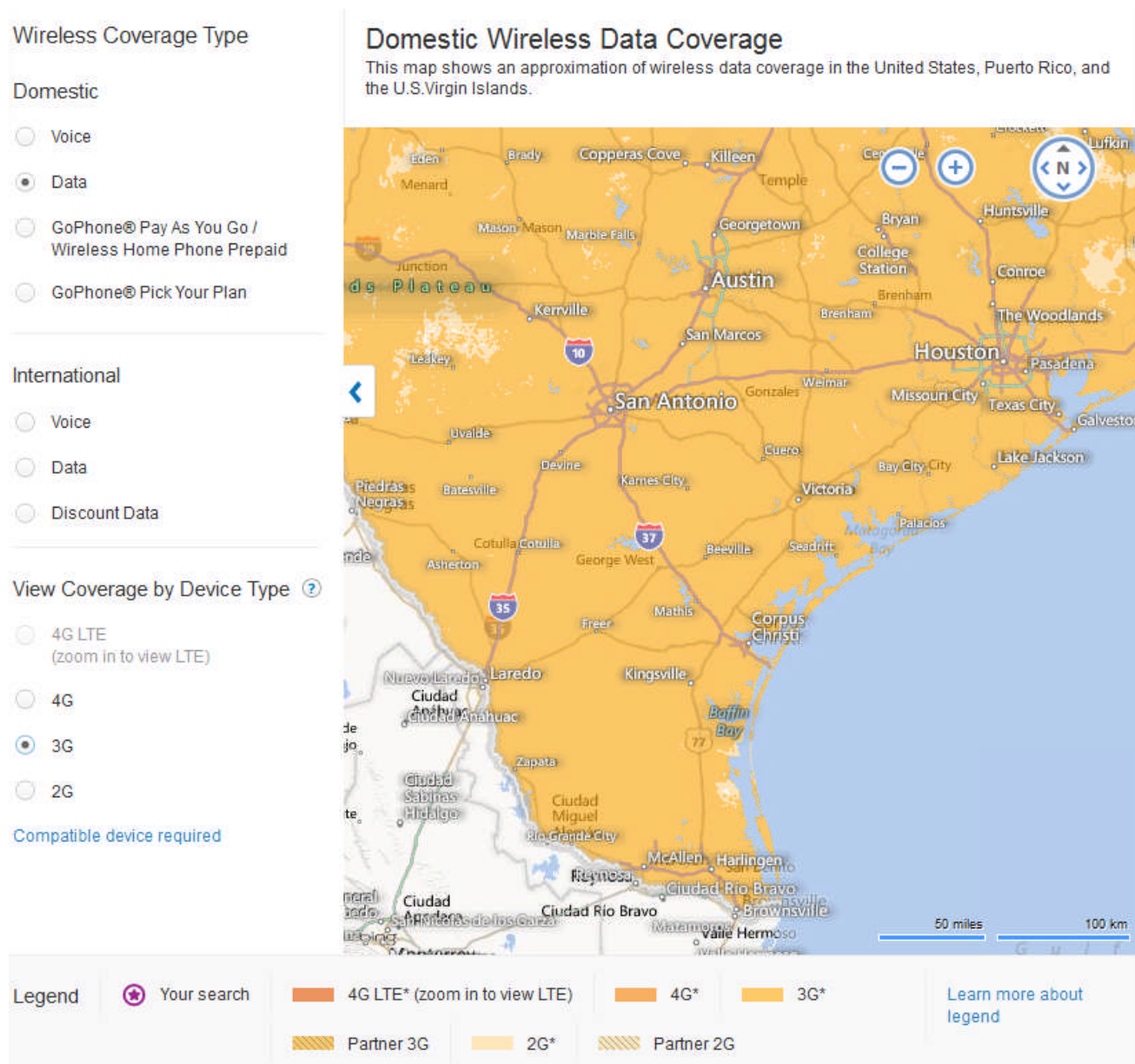
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Exhibit 1

AT&T 3G Coverage From AT&T.com:¹



¹ Screenshot taken on September 29, 2013 from ATT.com, AT&T Maps, <http://www.att.com/maps/wireless-coverage.html#fbid=mR-qrV37x5h>.

Cricket 3G Coverage From MyCricket.com:²

search cricket coverage

My home zip code: 22201 ([Change](#))

Check coverage for a specific location:

Street:

City: State: Zip:

Arlington VA 22201

show coverage

coverage map legend [print map](#)

Select the coverage type to display

Talk & Text Coverage

3G Data Coverage

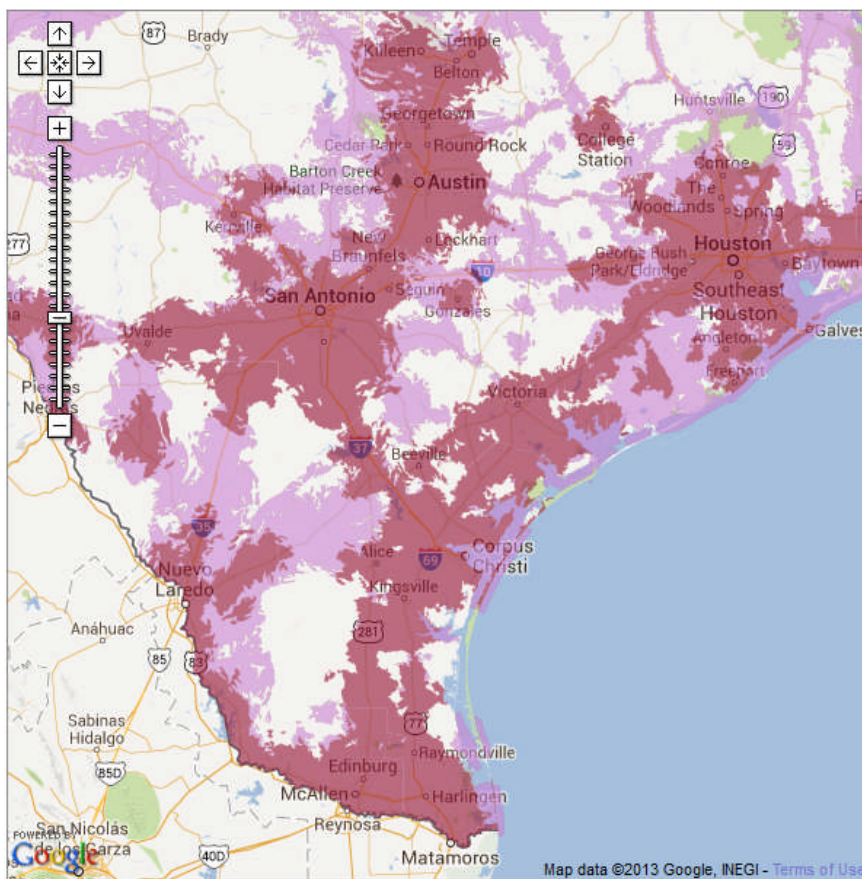
☒ Cricket 3G Data Coverage ?

☒ Partner 3G Data Coverage ?

☒ Additional Partner Data Coverage (Phones only) ?

☐ No Coverage

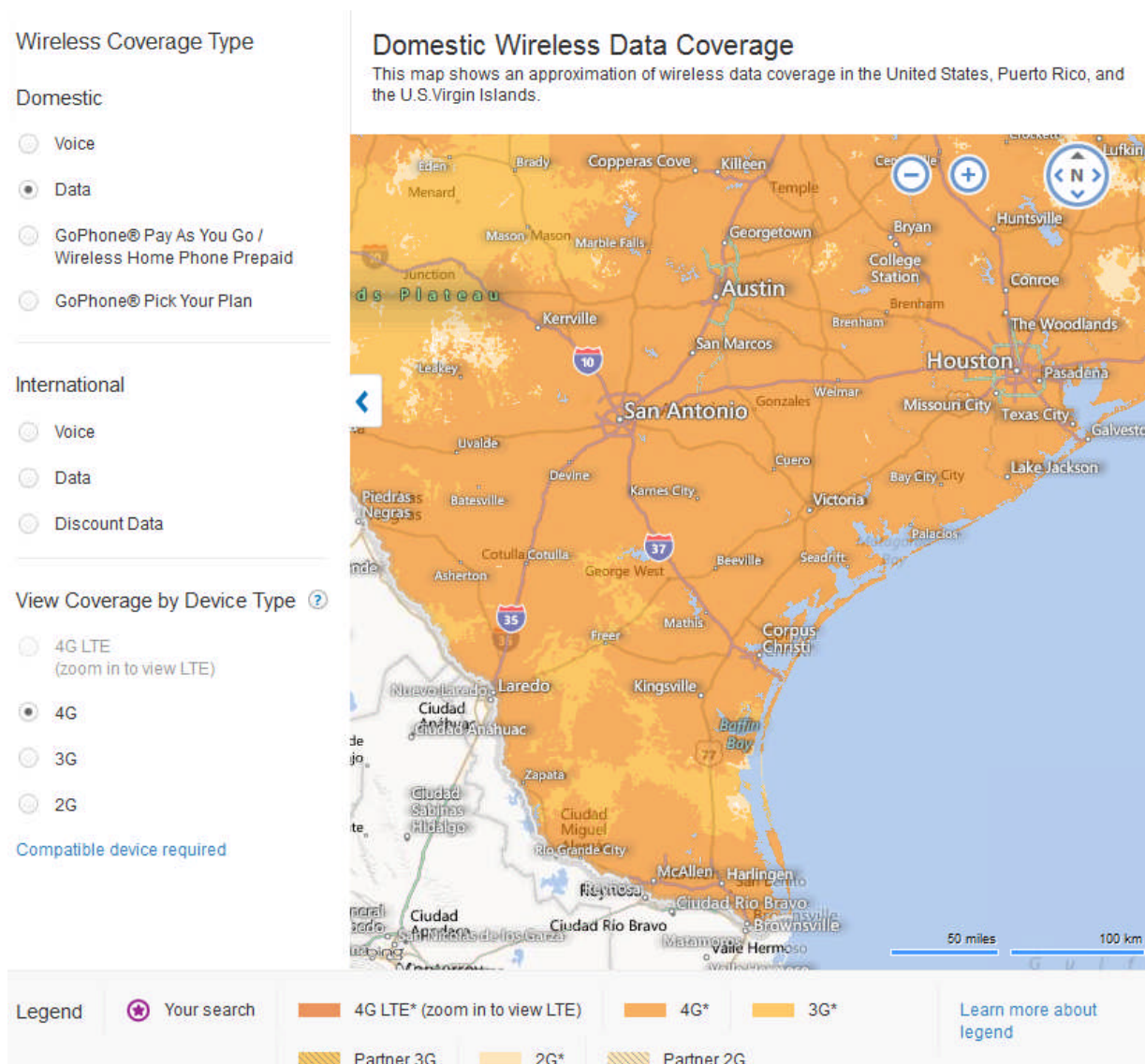
4G LTE Data Coverage



Please review the coverage map, which shows the scope of your service area. Map depicts an approximation of service coverage. Actual coverage area may differ substantially from map graphics and may be affected by such things as terrain, weather, foliage, buildings, signal strength, customer equipment and other factors. Coverage indoors may also vary. Cricket does not guarantee availability of wireless network. Data is copyrighted by American Roamer, LLC. ©2013 Cricket Communications, Inc.

² Screenshot taken on September 29, 2013 from MyCricket.com, Coverage Maps, <http://www.mycricket.com/coverage/maps/wireless>.

AT&T 4G Coverage from AT&T.com (includes LTE and HSPA+):³



³ Screenshot taken on September 29, 2013 from ATT.com, AT&T Maps, <http://www.att.com/maps/wireless-coverage.html#fbid=mR-qrV37x5h>.

Cricket 4G Coverage From MyCricket.com:⁴

search cricket coverage

My home zip code: 22201 ([Change](#))

Check coverage for a specific location:

Street:

City:

State:

Zip:

[show coverage](#)

coverage map legend [print map](#)

Select the coverage type to display

☒ **Talk & Text Coverage**

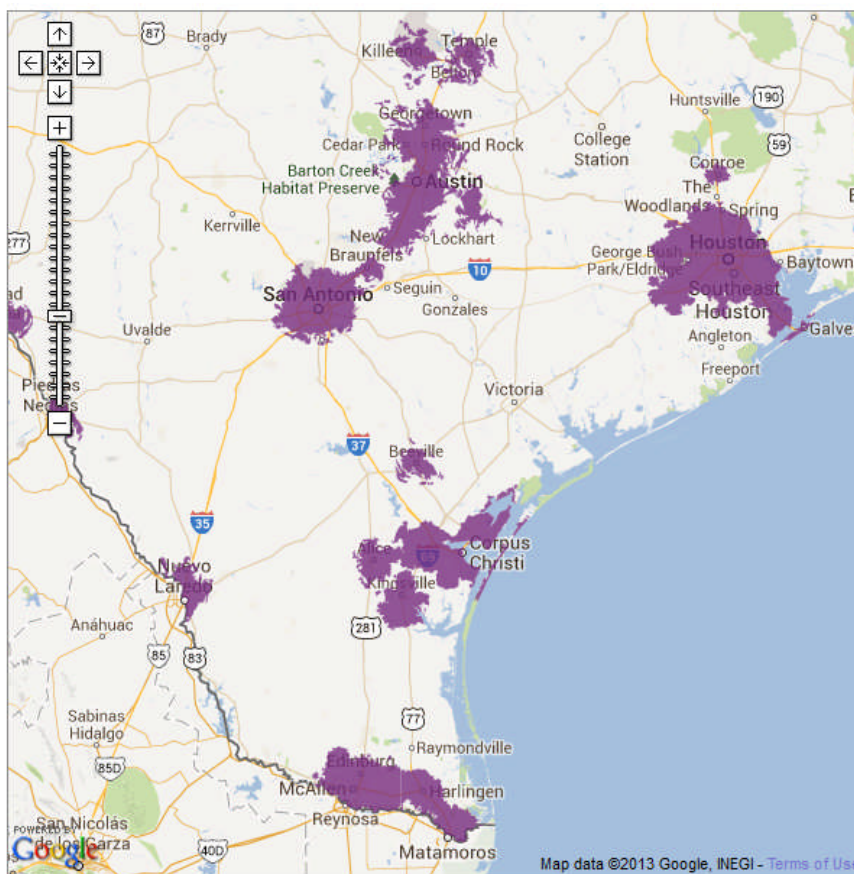
☒ **3G Data Coverage**

☒ **4G LTE Data Coverage**

☒ Cricket 4G LTE Data Coverage
(4G device required for 4G LTE service)

☒ Partner 4G LTE Data Coverage

☐ No Coverage



Please review the coverage map, which shows the scope of your service area. Map depicts an approximation of service coverage. Actual coverage area may differ substantially from map graphics and may be affected by such things as terrain, weather, foliage, buildings, signal strength, customer equipment and other factors. Coverage indoors may also vary. Cricket does not guarantee availability of wireless network. Data is copyrighted by American Roamer, LLC. ©2013 Cricket Communications, Inc.

⁴ Screenshot taken on September 29, 2013 from MyCricket.com, Coverage Maps, <http://www.mycricket.com/coverage/maps/wireless>.

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**Competitive Effects and Consumer Benefits from the Proposed
Acquisition of Leap Wireless by AT&T:
A Reply Declaration**

Mark A. Israel

October 23, 2013

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I. INTRODUCTION

1. On August 1, 2013, I submitted an initial Declaration in this matter.¹ In that Declaration I concluded that “significant adverse competitive effects are unlikely and the transaction will result in the kinds of efficiencies that directly benefit consumers. As such, based on the evidence I have reviewed to date, I conclude that the proposed merger is procompetitive and in the public interest.”² I found that “there are no significant competitive concerns from the proposed transaction because Leap is a small and declining regional wireless provider and AT&T is a national wireless provider that is a fairly distant competitor to Leap,”³ meaning that a merger of AT&T and Leap would not create significant upward pressure on prices. In contrast, I found that, because AT&T and Leap possess assets that are more productive when used in combination than separately (*e.g.*, Leap’s spectrum and prepaid/no-contract distribution experience combined with AT&T’s nationwide, 4G network), the merger would lead to pro-consumer, output-expanding efficiencies. Hence, I found that the proposed transaction is in the public interest.

2. I have been asked by counsel for AT&T and Leap to evaluate, from an economic perspective, certain arguments made in the Petitions to Deny filed in this matter. In this Declaration, I analyze and respond to those arguments on which economic analysis can clarify issues or resolve disagreements.⁴ I do not attempt to address every argument made by each Petitioner, nor do I provide an exhaustive analysis of those arguments that I do address. The fact

¹ Declaration of Mark A. Israel, “An Economic Analysis of Competitive Effects and Consumer Benefits from the Proposed Acquisition of Leap Wireless by AT&T,” Attachment to AT&T Inc. and Leap Wireless International, Inc., *Description of Transaction, Public Interest Showing, and Related Demonstrations*, August 1, 2013 (hereinafter, *Israel AT&T-Leap Declaration*). My qualifications are provided in this Initial Declaration.

² *Israel AT&T-Leap Declaration*, ¶ 5.

³ *Israel AT&T-Leap Declaration*, ¶ 6.

⁴ Specifically, I analyze the following: Petition to Deny of Public Knowledge, Consumer Action, and Writers Guild of America West (hereinafter, *Public Knowledge Petition*); Petition to Condition of Competitive Carriers Association (hereinafter, *CCA Petition*); Petition to Deny of the Greenlining Institute (hereinafter, *Greenlining Institute Petition*); Comments of the Rural Wireless Association, Inc. (hereinafter, *RWA Comments*); Petition to Deny of Youghiogheny Communications, LLC (hereinafter, *YC Petition*); Information Age Economics, “An Analysis of Competitive Effects and Consequences for Consumers and Other Stakeholders from the Proposed Acquisition of Leap Wireless by AT&T,” attachment to *YC Petition* (hereinafter, *IAE Analysis*).

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that I do not address a particular argument does not indicate agreement with that argument. Rather, some of the arguments advanced by Petitioners are implausible or illogical on their face and others do not raise economic issues.

3. Nothing in the Petitioners' filings causes me to change my fundamental conclusion that the proposed merger is pro-competitive and in the public interest.

4. The remainder of this Declaration is organized as follows. Section II describes the absence of meaningful objections by Petitioners to the efficiencies and associated consumer benefits of the proposed transaction. Section III refutes Petitioners' claims that the Commission should change the product market definition on which it has long relied. Section IV refutes an implication of some Petitioners' arguments—that any degree of competition between two companies means that a merger will be anticompetitive. Section V addresses Petitioners' misapplication of the Commission's spectrum screen. Section VI refutes Petitioners' claims that consumers in particular local areas will be harmed, either by the aggregation of spectrum or the loss of a competitor.

II. PETITIONERS RAISE NO COHERENT OBJECTION TO MY CONCLUSION THAT THE PROPOSED TRANSACTION CREATES SUBSTANTIAL DIRECT CONSUMER BENEFITS

5. As discussed in my prior declaration, AT&T's proposed acquisition of Leap creates substantial efficiencies that, as a matter of economics, will result in direct consumer benefits.⁵ Petitioners raise no coherent concerns about these efficiencies that cause me to change my opinion.

6. The efficiencies that the Applicants have demonstrated are standard efficiencies of the types routinely recognized by economists and accepted by the Commission in the past. For example, the Applicants have concluded that there will be efficiencies associated with combining the AT&T and Leap spectrum and cell sites; the benefits of adding spectrum and cell sites to an existing network have been recognized by the Commission as a merger-specific efficiency that

⁵ *Israel AT&T-Leap Declaration*, § IV.

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improves service quality for subscribers of the merged company.⁶ The Applicants have explained why there will be efficiencies associated with the reduction of marginal costs, *e.g.*, reduced roaming and backhaul costs; these kinds of marginal cost savings are well recognized by economists and have been accepted by the Commission as merger-specific efficiencies.⁷ The Applicants also anticipate that there will be quality improvements due to the planned expansion of the Cricket brand into new areas and the transitioning of existing Cricket customers onto the AT&T network, which is already superior to Leap's network and which will be improved by the addition of Leap's spectrum and cell sites. Expansion into new areas and access to a superior network and additional service offerings have been accepted by the Commission as merger-specific efficiencies.⁸

7. Petitioner Greenlining Institute offers two specific challenges to the stated efficiencies and their benefit to consumers, neither of which has merit. First, Greenlining Institute states that giving Cricket subscribers access to the devices and rate plans available on AT&T is not a merger-specific efficiency because Cricket customers could switch providers and choose AT&T

⁶ "T-Mobile USA customers would experience improved service quality, particularly in major metropolitan markets in which the existing T-Mobile USA and MetroPCS networks would be combined." (*In the Matter of Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. For Consent To Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 2322, 2348 ¶ 74 (2013) (hereinafter, *T-Mobile-MetroPCS Order*).)

⁷ Regarding roaming expenses, *e.g.*, the Commission has said "in many cases a carrier is able to provide coverage more economically from its own facilities than it can through roaming agreements - generating marginal cost reductions that, in a competitive marketplace, are likely to benefit consumers through lower price and/or increased service." (*Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 19 FCC Rcd. 21,522, 21,605 ¶ 219 (2004)). And regarding backhaul, the Commission has said, "merger-specific cost savings and cost avoidance may be achieved in a variety of ways, including...reduced reliance on outside networks for backhaul operations" (*Applications of Nextel Communications, Inc. & Sprint Corp. For Consent to Transfer Control of Licenses & Authorizations*, Memorandum Opinion and Order, 20 FCC Rcd 13,967, 14,014 ¶ 131 (2005))

⁸ "Existing MetroPCS customers would have access to a more robust, national network and a broader array of service and handset options. Consumers outside of MetroPCS's current limited service area will have the benefit of the MetroPCS service plans becoming available as an additional option." (*T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2348 ¶ 74).

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devices and services today.⁹ Although it is true that Cricket subscribers could switch today, only post-merger would they be able to choose the combination of Cricket's brand and distribution network, AT&T's devices and plans, and the superior AT&T nationwide LTE network (which will be improved further by the proposed merger). In addition, switching would require a consumer to break an established relationship with a provider. Hence, the merger allows the nationwide introduction of a new and improved product combination, a clear consumer benefit. To claim that this is not a benefit because consumers could switch to AT&T today is to claim that consumer-firm relationships, as well as the Cricket brand, distribution network, and services, have no value, a claim for which I see no support. Greenlining Institute ignores the Commission's recent order in the T-Mobile/MetroPCS, merger which found that expanded access to devices and services was a public interest benefit of that combination,¹⁰ and it fails to recognize that Cricket customers will have access to those devices and plans on an AT&T network with improved performance made possible by the transaction.

8. Second, Greenlining Institute apparently doubts that AT&T will pass on cost savings to consumers and asks for a condition on the merger to require AT&T "to pass the economic benefits of the transaction through to consumers."¹¹ There is no economic justification for interfering with the functioning of the marketplace by imposing such a condition. Cost reductions benefit society as a whole. But even if one focuses only on consumer welfare, it is a well-established economic principle that at least some of the benefits of marginal cost reductions – whether stemming from a merger, technological progress, or raw material price reductions, etc. – will be passed through to consumers. Greenlining Institute suggests that the mobile wireless marketplace is not sufficiently competitive to ensure that cost savings will be passed through, but it is well established that a decline in a firm's marginal costs causes a decline in its profit-maximizing price, regardless of the degree of market competition. Because it is profit maximizing to lower prices following marginal cost reductions, even a hypothetical monopolist

⁹ *Greenlining Institute Petition* at 18.

¹⁰ "Existing MetroPCS customers would have access to a more robust, national network *and a broader array of service and handset options.*" (*T-Mobile-MetroPCS Order*, ¶ 74 [emphasis added].)

¹¹ *Greenlining Institute Petition* at 19.

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would share marginal cost savings with consumers.¹² The fact that pass-through occurs under a wide range of market conditions implies that no regulatory condition on pass-through of cost savings is required in order for consumers to benefit from those reductions.

9. In addition, setting a condition requiring a particular rate of pass-through of marginal cost savings would amount to *de facto* price regulation applied to just one firm in the industry. Such regulation would be economically inefficient when the market is capable of delivering pass-through to consumers that reflects marketplace supply and demand conditions.

III. PETITIONERS' CALLS TO CHANGE THE COMMISSION'S LONG-STANDING ALL-WIRELESS PRODUCT MARKET DEFINITION ARE MISGUIDED AND PROVIDE NO BASIS FOR COMPETITIVE CONCERNS ABOUT THE PROPOSED TRANSACTION

A. THE COMMISSION'S LONG-STANDING "ALL-WIRELESS" PRODUCT MARKET DEFINITION REMAINS APPROPRIATE

10. The wireless market is a differentiated products market: wireless providers offer a broad continuum of competing offerings differentiated on price and other terms. Thus, the proper market in which to analyze the transaction is an all-wireless market, in which AT&T, Leap, Verizon, Sprint, T-Mobile, and others supply differentiated products and, because of that differentiation, compete with one another to varying degrees. This is consistent with the Commission's longstanding finding, reaffirmed as recently as last month, that the proper relevant market in which to analyze wireless transactions is a combined "mobile telephony/broadband services" or all-wireless market.¹³ As I showed in my initial declaration, the application of

¹² This point may be clarified by considering how a monopolist would respond to an increase in marginal costs. A claim that a monopolist would not find it profitable to charge lower prices when its marginal costs are lower would be equivalent to claiming that the monopolist would not find it profitable to charge higher prices when its marginal costs are higher. (For more discussion, including the fact that the amount of pass-through has no monotonic relationship with the degree of competition see, *e.g.*, Jeremy I. Bulow and Paul Pfleiderer (1983) "A Note on the Effect of Cost Changes on Prices," *Journal of Political Economy*, **6(1)**: 182-85.)

¹³ *Applications of AT&T Inc. and Atlantic Tele-Network, Inc. For Consent To Transfer Control of and Assign Licenses and Authorizations*, WT Docket No. 13-54, Memorandum Opinion and Order, DA 13-1940, rel. September 20, 2013, ¶ 22.

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standard analytical tools demonstrates that the transaction does not raise competitive concerns in the relevant all-wireless product market.¹⁴

11. Rather than address the transaction under the longstanding all-wireless market definition, Greenlining Institute and Public Knowledge urge the Commission to change its market definition and separately analyze a “prepaid” or “value-conscious” market.¹⁵ But neither Greenlining Institute nor Public Knowledge offers support for the claim that, because prepaid and postpaid products have somewhat different characteristics, they must compete in different relevant product markets. Instead, both Petitioners merely restate arguments that the Commission has previously rejected, without pointing to any changed circumstances that could justify departing from the Commission’s longstanding all-wireless market definition.

12. In fact, as detailed in my initial declaration and further described below, marketplace changes provide further support for the Commission’s longstanding definition. In particular, the supposed distinctions between “prepaid” and “postpaid” wireless products have become less pronounced over time, and data suggest that subscribers commonly substitute between postpaid and prepaid service, even though switching between AT&T and Leap in particular is low. The Commission’s past conclusions on market definition, including its explicit recent rejection of Greenlining’s proposal that it consider a “value-conscious market” in the T-Mobile/MetroPCS transaction,¹⁶ are fully supported by the evidence in this transaction.

**B. DEFINING A PREPAID-ONLY MARKET WOULD IGNORE COMPETITIVELY
RELEVANT CONSTRAINTS ON PREPAID OFFERINGS**

13. Drawing artificially narrow product market boundaries can exclude products that are relevant options for consumers and lead to incorrect conclusions about the likely competitive effects of a merger. In particular, to focus on a narrowly drawn prepaid-only or value-conscious “market” would be to ignore both marketplace changes that are further blurring the lines between

¹⁴ *Israel AT&T-Leap Declaration*, § III.

¹⁵ *Greenlining Institute Petition* at 6; *Public Knowledge Petition* at 11.

¹⁶ *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2332 ¶ 28.

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product offerings in the market and data showing that prepaid subscribers find postpaid service to be a good substitute for prepaid products.

14. In this matter, for purposes of analyzing whether the merger is likely to harm consumers even in a narrow prepaid-only “market,” the most relevant metric is the extent to which prepaid consumers are willing to switch to postpaid service.¹⁷ The more easily consumers switch from prepaid to postpaid service, the more of a constraint postpaid options impose on prepaid prices and the less likely it is that a narrowly drawn, prepaid market would yield accurate predictions about the competitive effects of a merger. In addition to the increasing product similarities between prepaid and postpaid offerings, the postpaid segment’s sheer size makes it relevant to a discussion of whether prepaid-only service constitutes a relevant market. Even if a change in a prepaid offering’s price led to less frequent switching to or from postpaid than would be predicted based on the postpaid segment’s share of all mobile wireless sales, the amount of switching could be very large relative to the size of the prepaid segment.

15. The notion that prepaid providers could raise price and not worry about the loss of customers to postpaid options is refuted by data showing substantial switching between prepaid and postpaid segments. Although porting data generally do not allow for distinctions between prepaid and postpaid subscribers when a company offers both, internal information from both AT&T and Leap indicates that there is substantial switching between prepaid and postpaid options. Leap surveys of deactivating customers show extensive switching of prepaid subscribers to postpaid options. A survey of deactivating Leap customers conducted in March 2012, for example, found that **[BEGIN LEAP HIGHLY CONFIDENTIAL INFORMATION]** **[END LEAP HIGHLY CONFIDENTIAL INFORMATION]** of

¹⁷ Here, I use the term “prepaid” to refer both to Public Knowledge’s “prepaid” proposal and Greenlining Institute’s “value-conscious” proposal as both Petitioners point to the same basic product features as distinguishing prepaid (or “value”) services from postpaid services. Greenlining describes a separate “submarket for value-conscious” services that includes offerings that “typically” come with “no-contract,” offer “unlimited use,” with “distinct handset offerings,” and “distinct (and more affordable) pricing” (*Greenlining Institute Petition* at 6.) Public Knowledge states “Prepaid plans often cost less than postpaid plans, never require lengthy contracts, and generally do not involve credit checks.” (*Public Knowledge Petition* at 12.)

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respondents who switched to another carrier signed a contract with that carrier.¹⁸ In a Leap deactivation study conducted in May 2013, **[BEGIN LEAP HIGHLY CONFIDENTIAL INFORMATION]** **[END LEAP HIGHLY CONFIDENTIAL INFORMATION]** of respondents who switched to another carrier signed a contract with that carrier.¹⁹ A third-party survey (to which AT&T subscribes) that was conducted in the first half of 2013 indicates that, of survey respondents who switched providers in the previous 12 months, **[BEGIN AT&T CONFIDENTIAL INFORMATION]** **[END AT&T CONFIDENTIAL INFORMATION]** of those who switched from a prepaid plan chose a postpaid service.²⁰

16. Although diversion from prepaid to postpaid is what matters most for considering whether a prepaid-only market is sensible, I examine diversion in both directions for completeness. For example, a survey of disconnecting AT&T subscribers conducted by AT&T in August 2013 indicates that, of the postpaid subscribers who switched to another carrier, **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** selected prepaid service.²¹ A third-party survey (to which AT&T subscribes) that was conducted in the first half of 2013 indicates that, of survey respondents who switched providers in the previous 12 months, **[BEGIN AT&T CONFIDENTIAL INFORMATION]** **[END AT&T CONFIDENTIAL INFORMATION]** of those who switched from a postpaid plan chose a prepaid service.²² And a Leap survey in Q1 2012 stated that almost **[BEGIN LEAP HIGHLY CONFIDENTIAL INFORMATION]** **[END LEAP HIGHLY CONFIDENTIAL INFORMATION]** of Leap's non-National Retail activations previously had a contract plan.²³

¹⁸ Cricket Port-in Promotion Deactivation Study, March 2012.

¹⁹ Leap 3 Month Deactivation Survey, May 2013.

²⁰ Nielsen Mobile Insights.

²¹ AT&T Churn Tracker Survey.

²² Nielsen Mobile Insights.

²³ Leap National Retail New Activations Survey, citing the percentage of non-National Retail Leap customers who previously had a contract plan.

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17. Statements made by providers offering prepaid options indicate that they view competition from postpaid as important and thus that ignoring this competition would lead to incomplete competitive analysis. For example, T-Mobile stated that its loss of branded prepaid subscribers in the second quarter of 2013 “was primarily a result of the qualified upgrades of branded prepaid customers to branded postpaid plans.”²⁴

18. Neither Greenlining Institute nor Public Knowledge offers any empirical evidence to counter these data. Hence, in the face of evidence of substantial switching between prepaid and postpaid options cited above, I conclude that it would be misleading to define a prepaid (or value) “market” and ignore the competitive constraints imposed by services that do not fit the narrow confines of that space.

C. RECENT MARKETPLACE DEVELOPMENTS HAVE STRENGTHENED THE CASE FOR AN ALL-WIRELESS PRODUCT MARKET

19. Recent changes in the wireless marketplace further strengthen the case for an all-wireless market. As I described in my initial declaration, any distinctions between prepaid and postpaid services that may have existed historically are increasingly blurred, as wireless providers continue to respond to evolving consumer demands.²⁵ Examples of blurring lines between prepaid and postpaid service include:

- Consumers who previously purchased postpaid plans increasingly want to avoid contracts, resulting in growth in prepaid subscribers that significantly exceeds growth in postpaid subscribers. Between Q2 2010 and Q2 2013, the number of prepaid subscribers grew from [BEGIN AT&T CONFIDENTIAL INFORMATION] [END AT&T CONFIDENTIAL INFORMATION] an increase of [BEGIN AT&T CONFIDENTIAL INFORMATION] [END AT&T CONFIDENTIAL INFORMATION] and during the same period, postpaid subscribers grew from [BEGIN AT&T CONFIDENTIAL INFORMATION]

²⁴ T-Mobile 2Q13 Investor Quarterly, at 2, available at <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTk3NDEzfENoaWxkSUQ9LTF8VHlwZT0z&t=1>

²⁵ *Israel AT&T-Leap Declaration*, § II.B.

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[END AT&T CONFIDENTIAL INFORMATION] an increase of only [BEGIN AT&T CONFIDENTIAL INFORMATION] [END AT&T CONFIDENTIAL INFORMATION]²⁶ These trends recently have induced the national carriers to introduce options to their postpaid plans that make them appear similar to the traditional prepaid plans. For example, T-Mobile's Jump! program,²⁷ Verizon's Edge program,²⁸ and AT&T's Next program²⁹ do not come with device subsidies and do not require multi-year contractual commitments. Thus, while these three plans are categorized as postpaid, they have terms and conditions that are very similar to those of the typical prepaid plans.

- Consumers who have used prepaid service increasingly want access to advanced (and more expensive) handsets, resulting in financing offers by traditional prepaid ("no-contract") providers that are very similar to a long-term contract with a subsidy. Prepaid customers now have access to many of the high-quality devices traditionally associated with postpaid service. Smartphones, including the iPhone, are widely available today from postpaid and prepaid/no-contract carriers alike.³⁰ For example, T-Mobile's prepaid smartphone lineup includes the Samsung Galaxy S III, the Google Nexus 4, and the Nokia Lumia 521.³¹ MetroPCS's

²⁶ Bank of America, "Wireless, Wireline, and Wireless Services Telecom Report: 2Q12 US Wireless Matrix," August 17, 2012, at 20; Bank of America, "Wireless, Wireline, and Wireless Services Telecom Report: 2Q13 US Wireless Matrix," August 19, 2013 at 20.

²⁷ T-Mobile introduced its Jump! program on July 10, 2013. (Press Release, T-Mobile US, Inc., "T-Mobile Announces Boldest Moves Yet as America's Un-Carrier." July 10, 2013, *available at* <http://newsroom.t-mobile.com/phoenix.zhtml?c=251624&p=irol-newsArticle&ID=1836669>.)

²⁸ Verizon introduced its Edge program on July 18, 2013. (Press Release, Verizon Wireless, "Verizon Edge Device Payment and Early Upgrade Plan," July 18, 2013, *available at* <http://news.verizonwireless.com/news/2013/07/edge-device-payment-early-upgrade.html>.)

²⁹ AT&T announced its Next program on July 16, 2013. (Press Release, AT&T, Inc., "AT&T Customers Can Get a New Smartphone or Tablet Every Year with No Down Payment with 'AT&T Next'," July 16, 2013, *available at* <http://www.att.com/gen/press-room?pid=24538&cdvn=news&newsarticleid=36749>.)

³⁰ *Israel AT&T-Leap Declaration*, ¶ 13.

³¹ T-Mobile Prepaid Phones, *available at* <http://prepaid-phones.t-mobile.com/prepaid-phones> (last visited September 14, 2013).

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offerings include the LG Optimus L9, the Samsung Galaxy S4, and the Nokia Lumia 521.³² Virgin Mobile, in addition to offering the iPhone 5s and 5c,³³ offers the Samsung Galaxy Victory and the LG Optimus F3.³⁴ Boost Mobile's smartphones include the Samsung Galaxy S III, the LG Optimus F7, and the HTC One SV.³⁵ StraightTalk offers the Samsung Galaxy S III, the LG Optimus Extreme, and the Huawei H883G Windows smartphone.³⁶

- Prepaid carriers today often have access to advanced 4G networks offered by major wireless service providers. For example, in January, T-Mobile began offering unlimited nationwide 4G data plans on a prepaid basis,³⁷ and T-Mobile also offers 4G LTE access through its MetroPCS brand.³⁸ Sprint's Boost and Virgin Mobile offer prepaid plans on Sprint's 4G LTE network,³⁹ and since last

³² MetroPCS Phones, *available at* <http://www.metropcs.com/metro/category/Phones/cat170019> (last visited October 5, 2013).

³³ Zachary Lutz, "Apple iPhone 5s and 5c Now at Virgin Mobile for \$100 Below Retail," *Engadget* October 1, 2013, *available at* <http://www.engadget.com/2013/10/01/apple-iphone-5s-and-5c-now-available-at-virgin-mobile/>.

³⁴ Virgin Mobile Phones, *available at* http://www.virginmobileusa.com/shop/cell-phones/#/sort_love/view_grid/type_android/ (last visited October 5, 2013).

³⁵ Boost Mobile Shop Phones, *available at* <http://www.boostmobile.com/shop/phones/#/> (last visited October 5, 2013).

³⁶ Walmart Prepaid Cell Phones, http://www.walmart.com/browse/no-contract-phones-plans/prepaid-cell-phones/straight-talk/1105910_1072335_1056206/YnJhbmQ6U3RyYWlnaHQgVGFSawieie?ic=60_0&tab_value=all&pref_store=5129&ss=false& (last visited October 5, 2013).

³⁷ Andrew Kameka, "T-Mobile Begins Offering No-Contract Unlimited Nationwide 4G Data Plans," *Mobile Burn*, January 9, 2013, *available at* <http://www.mobileburn.com/21110/news/t-mobile-begins-offering-no-contract-unlimited-nationwide-4g-data-plans#biA4Q23MtAHi4LHS.99>.

³⁸ Phil Goldstein, "T-Mobile to Expand MetroPCS Footprint by 100M POPs," *FierceWireless*, May 15, 2013, *available at* <http://www.fiercewireless.com/story/t-mobile-expand-metropcs-footprint-100m-pops/2013-05-15#ixzz2X3lBpuws>.

³⁹ *See, e.g.*, Press Release, Virgin Mobile, "Boost Mobile and Virgin Mobile USA Each Strengthen Their 4G LTE Lineups With Award-Winning Samsung Galaxy S III," May 21, 2013, *available at* <http://newsroom.virginmobileusa.com/press-release/handsets/boost-mobile-and-virgin-mobile-usa-each-strengthen-their-4g-lte-lineups-award> (announcing the availability of the Samsung Galaxy S III under "no-contract" plans to run on "the super-fast 4G LTE network from Sprint").

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year have been offering 4G Wi-Max service.⁴⁰ Earlier this year prepaid brand StraightTalk launched its first LTE device, the Samsung Galaxy S III,⁴¹ and StraightTalk now also supports AT&T-compatible LTE devices, offering unlimited LTE data, voice, and text for \$45 per month.⁴²

D. WITHIN THE PREPAID SEGMENT, AMPLE COMPETITION WOULD REMAIN POST-TRANSACTION

20. Even if competitive effects were assessed within the more narrowly defined prepaid segment, ample competition would remain post-transaction. Even combined, AT&T and Leap will have a far smaller estimated share of prepaid/no-contract subscribers **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** than either T-Mobile **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** or Sprint **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]**.⁴³ And, given the continuing decline in Leap's subscribers and the growing gap between its network and that of its competitors, absent the proposed transaction, Leap would be even less competitively significant in the future than it is today. In contrast, the combined AT&T/Leap will continue to face competition from the prepaid – and postpaid – offerings of Verizon and others, as well as competition from recently strengthened providers T-Mobile and Sprint.

⁴⁰ Mike Dano, "Sprint Launches Prepaid LTE Service through Virgin, Boost," *FierceWireless*, February 25, 2013, *available at* <http://www.fiercewireless.com/story/sprint-launches-prepaid-lte-service-through-virgin-boost/2013-02-25#ixzz2etJZ8ZBP> (noting that Boost and Virgin started offering smartphones last year running on Clearwire's mobile WiMAX network).

⁴¹ Jeremiah Rice, "The Galaxy S III Is StraightTalk's First LTE Phone, Available Now For \$439.99 - Uses Sprint Network," *AndroidPolice.com*, May 14, 2013, *available at* <http://www.androidpolice.com/2013/05/14/the-galaxy-s-iii-is-straighttalks-first-lte-phone-available-now-for-439-99-uses-sprint-network/>.

⁴² "Straight Talk now accepts AT&T-compatible LTE devices," *Engadget*, September 13, 2013, *available at* <http://www.engadget.com/2013/09/13/straight-talk-now-accepts-att-compatible-lte-devices/>.

⁴³ AT&T internal prepaid subscriber share estimates.

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1. A standalone Leap would be a weaker competitor in the future than it has been in the past

21. As discussed in my prior declaration, current measures of competitive significance, such as subscriber shares, likely overstate Leap's future competitive importance.⁴⁴ For example, Leap's share of all subscribers has been falling for at least the past 15 months both nationally and in most local areas, and because prepaid subscribers are growing faster than postpaid subscribers, Leap's share of prepaid subscribers is falling even faster.⁴⁵ As of June 2013, Leap's share of the all-wireless market nationally is [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION].

Between March 2012 and June 2013, Leap's share of all-wireless subscribers declined in [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]⁴⁶ [END AT&T HIGHLY CONFIDENTIAL INFORMATION] CMAs where it has more than 2% of subscribers, and Leap's share across all CMAs where it has more than 2% of subscribers declined from [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION].⁴⁷ In local areas cited by some Petitioners as places where there might be competitive harm following the transaction, Leap's decline has been substantial: Between March 2012 and June 2013, Leap lost [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY

⁴⁴ *Israel AT&T-Leap Declaration*, § III.B.2.e.

⁴⁵ All subscriber share calculations are based on AT&T internal estimates.

⁴⁶ In my initial Declaration, I found [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION] CMAs where Leap had more than 2% share of subscribers based on March 2013 estimates. Because Leap's share in most CMAs has continued to decline, in my current analysis, which is based on June 2013 estimated subscribers, Leap's share has dropped below 2% in [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION].

⁴⁷ I also note that the increase in Leap's share between 2009 and 2012 shown in my initial declaration was driven mostly by an expansion of Leap to new areas and its acquisition of Pocket Communications in South Texas rather than a strengthening of Leap's presence in existing markets. Leap's subscribers in the areas where it has been present the longest (since the late 1990s/early 2000s) [BEGIN LEAP HIGHLY CONFIDENTIAL INFORMATION] [END LEAP HIGHLY CONFIDENTIAL INFORMATION]

CONFIDENTIAL INFORMATION] of its estimated subscribers and **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** of its estimated share in the five South Texas CMAs.⁴⁸

22. Given Leap's current financial condition, the decline in revenues from a dwindling customer base has contributed to Leap's decision to cut back on capital expenditures, including those associated with LTE, and to implement other cost-cutting measures that Leap believes "may further negatively impact customer acquisition and retention in the future."⁴⁹

⁴⁸ Between March 2012 and June 2013, Leap's estimated total subscribers in the five CMAs in South Texas identified by Youghioghenny's economists declined by **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** while total estimated industry subscribers increased by **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** Leap lost more than **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** of its estimated share of subscribers in three of these CMAs: 033-San Antonio, TX **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]**; 112-Corpus Christi, TX **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]**; and 281-Laredo, TX **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]**. In addition, Leap lost more than **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** of its estimated share of subscribers in the following nearby CMAs: 010-Houston, TX **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]**; 075-Austin, TX **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]**; 160-Killeen-Temple, TX **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]**; 170-Galveston-Texas City, TX **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]**; 300-Victoria, TX **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]**; 666-Texas 15 - Concho **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]**; 669-Texas 18 - Edwards **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]**; and 671-Texas 20 - Wilson **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]**

⁴⁹ Declaration of Douglas S. Hutcheson, August 1, 2013, ¶¶ 5-9.

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23. Leap's 4G network is smaller and less robust than that of its competitors, covering only approximately 21 million people and only 35% of Leap's subscribers.⁵⁰ Furthermore, Leap's limited financial resources, high debt load, and weak spectrum position suggest that the gap between its network and the networks of its competitors will continue to grow.⁵¹ This will reduce Leap's competitive significance in the future even further as consumers demand more – and higher quality – data services.⁵² In addition to being confined to a limited footprint, the LTE network that Leap has deployed is slower than the LTE networks that, *e.g.*, Sprint and T-Mobile have deployed in the same areas (see Table 1), and the speed of the Sprint and T-Mobile networks should continue to grow as both build out and improve their LTE service (see discussion below).

[BEGIN LEAP HIGHLY CONFIDENTIAL INFORMATION]

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2. T-Mobile has strengthened its prepaid offering with the acquisition of MetroPCS, and MetroPCS is having an impact where it has entered

24. T-Mobile's prepaid (both T-Mobile branded and the recently launched GoSmart brand) and postpaid offerings have long been an important competitor to Leap's offerings, accounting for almost **[BEGIN LEAP HIGHLY CONFIDENTIAL INFORMATION]** **[END LEAP**

⁵⁰ *Id.*, ¶ 9.

⁵¹ *Id.*, ¶¶ 5-7, 11-12.

⁵² *Id.*, ¶¶ 6, 9.

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HIGHLY CONFIDENTIAL INFORMATION] of port-outs from Leap in the two years before its acquisition of MetroPCS.⁵³ Over this time period, T-Mobile increased its share of Leap port-outs from **[BEGIN LEAP HIGHLY CONFIDENTIAL INFORMATION]** **[END LEAP HIGHLY CONFIDENTIAL INFORMATION]** and T-Mobile and MetroPCS combined now capture **[BEGIN LEAP HIGHLY CONFIDENTIAL INFORMATION]** **[END LEAP HIGHLY CONFIDENTIAL INFORMATION]** of Leap port-outs.
[BEGIN LEAP HIGHLY CONFIDENTIAL INFORMATION]

⁵³ From May 2011 to April 2013, Sprint accounted for **[BEGIN LEAP HIGHLY CONFIDENTIAL INFORMATION]** **[END LEAP HIGHLY CONFIDENTIAL INFORMATION]** of all Leap port-outs. T-Mobile accounted for **[BEGIN LEAP HIGHLY CONFIDENTIAL INFORMATION]** **[END LEAP HIGHLY CONFIDENTIAL INFORMATION]** Verizon accounted for **[BEGIN LEAP HIGHLY CONFIDENTIAL INFORMATION]** **[END LEAP HIGHLY CONFIDENTIAL INFORMATION]** and AT&T accounted for **[BEGIN LEAP HIGHLY CONFIDENTIAL INFORMATION]** **[END LEAP HIGHLY CONFIDENTIAL INFORMATION]**.

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25. With the acquisition of MetroPCS, T-Mobile has strengthened its prepaid offerings, and it is aggressively rolling out MetroPCS in areas that MetroPCS previously did not serve, including areas currently served by Leap. The initial launch of fifteen new MetroPCS markets (the “Apollo 15” markets) was completed within three months of the close of the merger.⁵⁴ T-Mobile is supporting the launch of MetroPCS in new markets – and bolstering the presence of MetroPCS in existing markets – by expanding the MetroPCS retail distribution network. For example, in the markets MetroPCS recently entered, there are 1,112 retail locations selling MetroPCS services, 70% of which are in areas where Leap competes.⁵⁵ MetroPCS now offers services in 30 operating areas.⁵⁶

26. The appeal of the MetroPCS offering to Leap subscribers is reflected in an increase in Leap port-outs to T-Mobile/MetroPCS in those areas where T-Mobile has introduced the MetroPCS brand. In the Apollo 15 markets in which Leap is also present, there was a notable increase in the share of port-outs from Leap captured by T-Mobile following the introduction of MetroPCS in July-August 2013. Figure 2 shows the aggregate share of Leap port-outs captured

⁵⁴ Scott Moritz, “T-Mobile Adds 15 MetroPCS Cities to Vie With AT&T, Leap,” *Bloomberg News*, July 25, 2013, *available at* <http://www.bloomberg.com/news/2013-07-25/t-mobile-adds-15-metropcs-cities-to-vie-with-at-t-leap.html>. *See also*, Press Release, T-Mobile US, Inc., “MetroPCS Takes On New Markets, Doubles Reach in Less Than Three Months (July 25, 2013), *available at* <http://newsroom.t-mobile.com/phoenix.zhtml?c=251624&p=irol-newsArticle&ID=1841246> (“Less than three months after completing the combination of T-Mobile USA and MetroPCS, the company has doubled its MetroPCS brand presence across the country and is bringing ‘Wireless for All’ to 15 new markets.”). The fifteen new MetroPCS markets are Baltimore, Birmingham, Cleveland and Akron, Corpus Christi, Fresno, Houston, Memphis, New Orleans, Rio Grande Valley, San Antonio and Austin, San Diego, Seattle and Tacoma, Tallahassee, Toledo and Sandusky, and Washington, D.C. (*Id.*)

⁵⁵ The number of retail locations in each area was determined using MetroPCS’s online store locator, and includes the number of retail locations of any type selling MetroPCS service within a 40-mile radius of the city center. For cities where the 40-mile radii overlapped, duplicate stores were eliminated when determining the total number of locations for the areas overall. Data on the number of stores were retrieved on October 3, 2013. (*See*, <http://www.metropcs.com/metro/maps/storelocator.jsp>.)

⁵⁶ Press Release, T-Mobile US, Inc., “MetroPCS Takes on New Markets: Doubles Reach in Less than Three Months,” July 25, 2013, *available at* <http://newsroom.t-mobile.com/phoenix.zhtml?c=251624&p=irol-newsArticle&ID=1841246>.

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by each provider in the Apollo 15 markets served by Leap. In these markets, Leap port-outs increased in absolute number and T-Mobile's share of Leap port-outs increased from [BEGIN LEAP HIGHLY CONFIDENTIAL INFORMATION] [END LEAP HIGHLY CONFIDENTIAL INFORMATION] at the time of the MetroPCS acquisition to [BEGIN LEAP HIGHLY CONFIDENTIAL INFORMATION] [END LEAP HIGHLY CONFIDENTIAL INFORMATION] in September, 2013.

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27. The expansion of MetroPCS into 15 new areas has already increased the share of Leap subscribers in areas served by MetroPCS from [BEGIN LEAP HIGHLY CONFIDENTIAL

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[END LEAP HIGHLY CONFIDENTIAL

INFORMATION]⁵⁷ And T-Mobile's expansion plans for MetroPCS are not limited to the 15 new areas it has already entered; at the time it announced MetroPCS's initial expansion, T-Mobile also said that the expansion would "accelerate in third quarter [2013] and through early 2014," and that, by the end of 2014, T-Mobile planned to have expanded MetroPCS to cover 100 million more POPs than MetroPCS covered at the time of the merger.⁵⁸

28. In addition to expanding the number of areas in which MetroPCS is available, T-Mobile has been aggressively rolling out 4G service. T-Mobile recently announced that its LTE network now covers 180 million POPs in 154 metro areas (up from the 157 million POPs in 116 metro areas it announced just a few months ago), and it plans to expand its LTE network to cover 200 million pops by the end of 2013.⁵⁹ As customers are transitioned off the MetroPCS network, the freed-up spectrum will be added to T-Mobile's 4G LTE network, which the company says "provides a path to double its initial super-fast 4G LTE deployment (to 20+20 MHz of 4G LTE) in approximately 90 percent of the top 25 metro areas planned for 2014 and beyond."⁶⁰ T-Mobile expects the migration of MetroPCS customers to continue at a rapid pace and to be

⁵⁷ To determine where Leap subscribers are covered by MetroPCS, I use porting data to determine the Leap areas where Leap reports ports to MetroPCS. I then calculate the share of Leap voice subscribers in the areas where it has ports to Metro as a share of all Leap voice subscribers. By using porting data before and after the Apollo 15 rollout, I can determine the share of Leap subscribers in areas served by MetroPCS before and after the rollout.

⁵⁸ Phil Goldstein, "T-Mobile to Expand MetroPCS Footprint by 100M POPs," *FierceWireless*, May 15, 2013, *available at* <http://www.fiercewireless.com/story/t-mobile-expand-metropcs-footprint-100m-pops/2013-05-15#ixzz2X3lBpuws>.

⁵⁹ Press Release, T-Mobile US, Inc., "T-Mobile to Offer iPhone 5s and iPhone 5c," September 12, 2013, *available at* <http://newsroom.t-mobile.com/phoenix.zhtml?c=251624&p=irol-newsArticle&ID=1854553>; Press Release, T-Mobile US, Inc., "T-Mobile US Reports Second Quarter 2013 Results," August 8, 2013, *available at* <http://newsroom.t-mobile.com/phoenix.zhtml?c=251624&p=irol-newsArticle&ID=1845964> (describing T-Mobile's LTE coverage as of July 2013 and noting goal of covering 200 million people with 4G LTE by end of 2013).

⁶⁰ Press Release, T-Mobile US, Inc., "Migration of MetroPCS Customers to Nationwide 4G HSPA+ and LTE Network Ahead of Schedule," June 14, 2013, *available at* http://investor.t-mobile.com/phoenix.zhtml?c=177745&p=irol-newsArticle_print&ID=1829961&highlight.

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completed by the end of 2015.⁶¹ By moving MetroPCS service to the T-Mobile network, the quality and therefore the competitiveness of the MetroPCS offering improves.⁶² Indeed, T-Mobile has stated that offering LTE access in MetroPCS's expansion areas will give MetroPCS "a leg up on its prepaid competitors."⁶³

3. Sprint is already strong in the prepaid segment and now has additional spectrum resources

29. With its two prepaid brands, Virgin Mobile and Boost Mobile, Sprint has captured a significant share of prepaid subscribers, with **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** of such subscribers and **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** of gross prepaid adds in the first quarter of 2013.⁶⁴ Sprint captures a large share of port-outs from Leap (see Figure 1).

30. As I noted in my initial declaration, in addition to its current strength within the prepaid segment, Sprint's recent transactions with SoftBank and Clearwire are expected to strengthen Sprint's competitive position. A recent Deutsche Bank report on Sprint noted that **[BEGIN AT&T CONFIDENTIAL INFORMATION]**

⁶¹ Press Release, T-Mobile US, Inc., "Migration of MetroPCS Customers to Nationwide 4G HSPA+ and LTE Network Ahead of Schedule," June 14, 2013, *available at* http://investor.t-mobile.com/phoenix.zhtml?c=177745&p=irol-newsArticle_print&ID=1829961&highlight.

⁶² "[MetroPCS] is able to offer customers access to T-Mobile's LTE network thanks to the deployment of a unified core network between the two offerings, giving customers nearly seven times the speed without customers having to upgrade their handsets." (Sue Marek, "Updated: T-Mobile Is Fueling MetroPCS' Renaissance, Will AT&T Do the Same for Leap?," *FierceWireless*, August 9, 2013, *available at* <http://www.fiercewireless.com/story/t-mobile-fueling-metropcs-renaissance-will-att-do-same-leap/2013-08-09>.)

⁶³ Phil Goldstein, "T-Mobile to Expand MetroPCS Footprint by 100M POPs," *FierceWireless*, May 15, 2013, *available at* <http://www.fiercewireless.com/story/t-mobile-expand-metropcs-footprint-100m-pops/2013-05-15#ixzz2X3lBpuws> (statement attributed to T-Mobile CFO Braxton Carter).

⁶⁴ Based on AT&T internal prepaid subscriber share estimates on a national basis, including TracFone. (If MVNO TracFone were excluded, Sprint's share of prepaid subscribers of facilities-based providers would be about **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]**)

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Sprint's Boost and Virgin Mobile offer prepaid plans using Sprint's 4G LTE network.⁶⁶

IV. PETITIONERS MISUNDERSTAND THE ECONOMICS OF DIFFERENTIATED PRODUCTS MARKETS AND THUS DRAW IMPROPER CONCLUSIONS

31. Information Age Economics (IAE), which submitted an analysis on behalf of Petitioner Youghiogheny Communications, claims that my conclusion that the proper product market in which to analyze the transaction is an all-wireless market is contradicted by what they characterize as my assertion that AT&T and Leap are not competitors. However, IAE has mischaracterized my opinion and drawn conclusions that are inconsistent with fundamental economic principles and established methods of antitrust analysis.

32. Referring to my analysis of porting data that shows that customers porting-out from Leap choose non-AT&T service at a much higher rate than they choose AT&T service, IAE states:

An obvious, and more plausible explanation for this decision on the part of Leap's former customers [to choose Verizon, Sprint, and T-Mobile at higher rates than AT&T] is that they have tended to find the services offered by AT&T's competitors better suited to their needs than are those of AT&T's. It is counterintuitive to claim that Leap is not a competitor to AT&T because its former customers tend to select AT&T's competitors when they migrate, as if Leap were somehow competing with all of AT&T's competitors, with the exception of AT&T itself.

In the same illogical and inconsistent vein, Dr. Israel emphasizes that the proper market to consider in reviewing the AT&T/Leap transaction is a single or all--wireless market with no distinction between "value" and "premium" services. In other words, both Leap's and AT&T's wireless services are competing in the

⁶⁵ Deutsche Bank, "Sprint Nextel Corp.: The new spectrum powerhouse; reinstating coverage at Buy," July 11, 2013, at 2.

⁶⁶ See, e.g., Press Release, Virgin Mobile, "Boost Mobile and Virgin Mobile USA Each Strengthen Their 4G LTE Lineups With Award-Winning Samsung Galaxy S III," May 21, 2013, *available at* <http://newsroom.virginmobileusa.com/press-release/handsets/boost-mobile-and-virgin-mobile-usa-each-strengthen-their-4g-lte-lineups-award> (announcing the availability of the Samsung Galaxy S III under "no-contract" plans to run on "the super-fast 4G LTE network from Sprint").

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same market. Yet, as noted, Dr. Israel claims simultaneously, thereby contradicting his own premise, that there are no significant adverse competitive effects arising from this transaction, because these two operators are competing in effectively separate markets as distant competitors.⁶⁷

And IAE goes on to state:

Since market evidence and behavior, as well as AT&T's actions, demonstrate that their major products are substitute goods, it is incorrect for AT&T and Dr. Israel to assert that Leap Wireless and AT&T are not competitors. Substitute services (and goods/products) are a well-known and common characterization used by economists. It is perverse logic for AT&T to argue that its admitted weakness in prepaid products and the relatively low porting subscriber proportions between the two operators mean that Leap Wireless is not a close competitor. There is ample evidence that postpaid and prepaid products, while not completely substitutable, are viable and increasingly strong substitutes for each other.⁶⁸

33. These statements by IAE are perplexing. Nowhere in my declaration did I state that AT&T and Leap were in separate markets. To the contrary, I concluded that they were in the same, all-wireless product market, but that they are distant competitors in that market. And because they are only distant competitors, anticompetitive effects from the proposed merger are unlikely.

34. There is nothing inconsistent in my opinion. To the contrary, my opinion is consistent with the economics of differentiated product markets, the analysis of which is described in many economic textbooks.⁶⁹ My opinion is also grounded in standard antitrust analysis of unilateral price effects in a market with differentiated products, as summarized in the *Horizontal Merger Guidelines*:

In differentiated product industries, some products can be very close substitutes and compete strongly with each other, while other products are more distant substitutes and compete less strongly. For example, one high-end product may

⁶⁷ IAE Analysis at 14.

⁶⁸ IAE Analysis at 15-16.

⁶⁹ For example, "products are differentiated because consumers think they are different....the pricing of one brand exerts a greater constraint on another brand's pricing when the two brands are close substitutes than when they are not." (Dennis W. Carlton and Jeffrey M. Perloff (2005), *Modern Industrial Organization 4th ed.*, (Boston, Mass: Pearson/Addison Wesley), at 202-03.)

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compete much more directly with another high-end product than with any low-end product.

...

The extent of direct competition between the products sold by the merging parties is central to the evaluation of unilateral price effects. Unilateral price effects are greater, the more the buyers of products sold by one merging firm consider products sold by the other merging firm to be their next choice.⁷⁰

35. IAE notes that Leap customers who port out may choose a provider other than AT&T because “they have tended to find the services offered by AT&T’s competitors better suited to their needs than are those of AT&T’s.” *This is exactly my point: Some firms compete more closely with others, and the porting data indicate that Leap subscribers who port out do not view AT&T as their next-best choice.* Hence, although AT&T and Leap are in the same relevant product market and thus compete to some degree, they are not close competitors and thus significant adverse unilateral effects resulting from the merger are unlikely.

36. IAE’s argument that the merger of AT&T and Leap would be anticompetitive despite the fact that providers other than AT&T provide products better suited to the needs of Leap’s customers implies that a merger of two firms would always have anti-competitive consequences if the firms competed even to the slightest extent in any market. The policy implication of IAE’s argument is that one should draw “bright-line” market boundaries and, ignoring economic evidence to the contrary, pretend that all firms that fall within the boundaries are equal competitors among which consumers do not distinguish. Such an extreme view would lead to the rejection of many mergers of two firms that participate in the same market, including many mergers that clearly would be welfare enhancing and that the Commission has approved in the past (such as T-Mobile/MetroPCS), and thus would undermine the goal of competition policy to promote competition and consumer welfare.

⁷⁰

U.S. Department of Justice and Federal Trade Commission, *Horizontal Merger Guidelines*, August 19, 2010, § 6.1.

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V. PETITIONERS MISAPPLY THE COMMISSION'S SPECTRUM SCREEN

37. The Commission's spectrum screen identifies local areas where an entity would possess, after a transaction, more than approximately one-third of the total spectrum that the Commission has determined is suitable and available for the provision of mobile telephony/broadband services.⁷¹ The Commission's current screen is triggered in counties where applicants would have "102 megahertz or more of cellular, PCS, SMR, 700 MHz, and WCS spectrum, where neither BRS nor AWS-1 spectrum is available; 121 megahertz or more of spectrum, where BRS spectrum is available, but AWS-1 spectrum is not available; 132 megahertz or more of spectrum, where AWS-1 spectrum is available, but BRS spectrum is not available; or 151 megahertz or more of spectrum where both AWS-1 and BRS spectrum are available."⁷²

38. Rather than apply the spectrum screen as it has been formulated and used by the Commission, various Petitioners argue that (i) the Commission should convert the screen into a cap, (ii) that the screen/cap should be set at a level far below its current level, and (iii) that the screen/cap should be applied to subsets of spectrum within the available bands. Petitioner Rural Wireless Association, for example, states that the Commission should "change its policies regarding mobile spectrum holdings so that no single carrier can hold more than 25 percent of all of the suitable and available commercial mobile radio service ('CMRS') spectrum available in any given county and no more than 40 percent of all of the suitable and available CMRS spectrum below one Gigahertz ('GHz') in any given county."⁷³ Petitioner Competitive Carriers Association recommends that the Commission should replace its current "single-trigger" approach with several thresholds for identifying competitive harms in the wireless market.⁷⁴ The suggested thresholds include implementing a 25 percent cap for usable spectrum below 1 GHz in

⁷¹ *Applications of Cellco Partnership d/b/a Verizon Wireless & SpectrumCo LLC & Cox TMI, LLC for Consent to Assign AWS-1 Licenses*, Memorandum Opinion and Order and Declaratory Ruling, 27 FCC Rcd. 10,698, 10,719 (2012) (hereinafter, *Verizon-SpectrumCo Order*), ¶ 59.

⁷² *Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corporation, Horizon Wi-Com, LLC, NextWave Wireless, Inc., and San Diego Gas & Electric Company For Consent To Assign And Transfer Licenses*, Memorandum Opinion and Order, (2012) (hereinafter, *AT&T-WCS Order*), ¶ 33, n. 94.

⁷³ *RWA Comments* at 3.

⁷⁴ *CCA Petition* at 13.

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local markets, and using the current one-third screen as a threshold for evaluating an entity's aggregated spectrum holdings (including holdings both below 1 GHz and above 1 GHz in each local market).⁷⁵

39. These calls to extend the spectrum screen beyond its established usage (including turning it into a cap) are not justified and provide no coherent basis for competitive concern about the proposed transaction.

A. THE COMMISSION'S SPECTRUM SCREEN IS ONLY A SCREEN TO TRIGGER FURTHER ANALYSIS OF OUTPUT MARKETS, NOT A CAP

40. Because the Commission's objective is to promote consumer welfare, and consumer welfare is driven by the performance of mobile wireless markets, a merger should be assessed in terms of its effects on downstream markets, not its effects on spectrum markets *per se*.⁷⁶

Spectrum aggregation policy should focus on preventing foreclosure in the downstream market, not on the amount of one input that a competitor holds. This is accomplished by (i) setting a screen to determine when a firm's spectrum holdings are large enough to warrant more careful review and (ii) in those cases where the screen is exceeded, undertaking the review to determine if there is any significant risk of foreclosure – and thus competitive harm in downstream markets – based on the spectrum holdings.

41. In contrast to a screen, a rigid cap on spectrum that does not consider local output market conditions would fail to protect consumers, and actually would harm consumers in several ways. As I (and my co-authors) have explained in several filings to the Commission:

- “A spectrum cap would force firms constrained by the cap to use an inefficient input mix—likely relying more heavily on cell splits or even more expensive

⁷⁵ CCA *Petition* at 13.

⁷⁶ The Commission, itself, has made this point explicitly. For example, in its order sunsetting the spectrum cap, the Commission stated,

Again, we emphasize that the markets with which we are principally concerned are the output markets for services, and that conditions in the input markets provide only a partial proxy measure of competition in the output markets.

(2000 *Biennial Regulatory Review – Spectrum Aggregation Limits for Commercial Mobile Radio Services*, 16 FCC Rcd 22,668, 22,680 (2001) (hereinafter, *Second Biennial Review Order*), ¶ 27.)

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alternatives like deployment of small cells—when utilizing additional spectrum would be the least-costly way to expand. This inefficiency would raise the costs of expanding service. Economic analysis clearly indicates that raising the marginal costs of successful wireless service providers would generally induce those firms to charge higher prices, reduce quality, and sell less of their services, all of which would harm consumers.”⁷⁷

- “...a binding spectrum cap could create a pricing umbrella for service providers that are unconstrained by the cap. The result would be lower industry output and higher equilibrium prices. *While those carriers unconstrained by the spectrum cap would gain from the loss of competition, consumers would be harmed.*”⁷⁸

In addition to these direct consumer harms, a spectrum cap would lead to losses in efficiency because output would be reallocated from low-cost service providers (that would tend to have higher market shares and higher spectrum demands) to higher-cost service providers (that would tend to have lower market shares and lower spectrum demands). A cap also would reduce innovation incentives because it could raise the cost or reduce the return from an innovative new device or service that would attract subscribers and increase the provider’s need for spectrum.⁷⁹

42. Rural Wireless Association’s call for a spectrum cap provides an illustration of the competitive harms from such policies. In particular, Rural Wireless Association proposes a spectrum cap of 25% of available spectrum, which it states would “absolutely ensure” that there will be a minimum of four “thriv[ing]” providers in each local area.⁸⁰ But RWA ignores that the Commission’s existing one-third screen produced a competitive landscape in which the Commission has determined that 82% of the U.S. population lives in areas covered by at least

⁷⁷ Mark A. Israel and Michael L. Katz, “Economic Analysis of Public Policy Regarding Mobile Spectrum Holdings,” November 28, 2012 (hereinafter, *Israel and Katz Declaration on Mobile Spectrum Policies*), Attachment A to Comments of AT&T Inc., *In the Matter of Policies Regarding Mobile Spectrum Holdings*, WT Docket No. 12-269, ¶ 49. [Internal footnote omitted.]

⁷⁸ *Israel and Katz Declaration on Mobile Spectrum Policies*, ¶ 49.

⁷⁹ *Israel and Katz Declaration on Mobile Spectrum Policies*, ¶ 49.

⁸⁰ *RWA Comments* at 5.

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four mobile broadband providers,⁸¹ and 93% lives in areas covered by at least four mobile wireless providers,⁸² and that in the typically rural areas where there are fewer than four providers today, entry is not constrained by spectrum scarcity. RWA's goal of ensuring that vibrant competition benefits consumers cannot be realized by restricting the aggregation of one input in the manner it proposes; rather RWA's proposed cap would be anti-competitive. Not only would RWA's proposed policy fail to guarantee that there would be at least four vibrant competitors in every local area, it would protect less efficient providers from competition, limit the ability of more innovative providers to succeed, and risk stranding spectrum inputs in the hands of providers who do not put the spectrum to its highest value use.

43. In proposing such a spectrum cap, Rural Wireless Association also ignores the fact that firms selling differentiated products and services will need different levels of all inputs, including spectrum, to serve the market, and instead presupposes that a provider could not be successful with less than 25% of spectrum. To the contrary, there are myriad examples of wireless providers who gain substantial subscriber shares in local areas where they have less than 25% of spectrum. For example, T-Mobile has 16.1% of the spectrum that counts toward the screen in Houston,⁸³ but an estimated **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** share of subscribers. And in Salt Lake City, T-Mobile has 16.2% of the spectrum that counts toward the screen, but an estimated **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** share of subscribers.

⁸¹ *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 11-186, Sixteenth Report, FCC 13-34, rel. March 21, 2013 (hereinafter, *16th CMRS Competition Report*), Table 9.

⁸² *16th CMRS Competition Report*, Table 7.

⁸³ Spectrum holding information used in this paragraph retrieved from FCC Spectrum dashboard; spectrum holdings in a CMA calculated as a population-weighted average across the counties in a CMA. Estimated shares are AT&T internal estimates.

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**B. DIFFERENT BANDS OF SPECTRUM SHOULD NOT BE TREATED DIFFERENTLY
UNDER THE SPECTRUM SCREEN**

44. The Commission's spectrum screen does not, nor should it, differentiate between bands of spectrum. For example, no special treatment should be given to low frequency (below 1 GHz) spectrum.⁸⁴ This follows because, as discussed above, the spectrum screen should focus on the risk of foreclosure, and a necessary condition for input foreclosure to occur is that there is no readily available substitute for the input in question. But a ready substitute for low-frequency spectrum exists in the form of higher-frequency spectrum coupled with sufficient investment in network facilities, rendering the possibility of foreclosure through hoarding low-frequency spectrum alone remote at best.⁸⁵

45. In addition to the inadvisability of treating low-frequency spectrum differently, in the current transaction AT&T is acquiring only PCS and AWS spectrum, and so there is no aggregation of low-frequency spectrum. Hence, Petitioner comments on aggregation of low frequency spectrum are irrelevant to an analysis of the proposed transaction.⁸⁶

⁸⁴ Discussion in this paragraph drawn from Michael L. Katz, Philip A. Haile, Mark A. Israel, and Andres V. Lerner, "Comment on the Submission of the U.S. Department of Justice Regarding Auction Participation Restrictions," WT Docket No. 12-269, June 13, 2013 (hereinafter, *Katz et al. DOJ Auction Comments*).

⁸⁵ The fact that the associated build-out costs are higher for high-frequency spectrum does not establish that low-frequency spectrum rights are essential. The appropriate focus of a foreclosure analysis is the *full cost* of entry or expansion, which, for wireless services, is the combined cost of spectrum and network facilities needed to obtain coverage and capacity. A fundamental lesson of economics is that market forces generally will equate the costs of substitutes, which means that prices of different types of spectrum will adjust to equate the total costs of providing equivalent service (*i.e.*, the rights for spectrum requiring greater facilities investment will tend to sell for less than rights to spectrum requiring less facilities investment).

⁸⁶ In section 8 of their report, IAE revisits our debate, from other FCC proceedings, relating to the proper treatment of spectrum from different frequency bands in evaluating a spectrum screen, including whether there should be differential treatment of spectrum under 1 GHz. (*IAE Analysis* at 23-25.) As noted above, such issues are irrelevant to the proposed transaction, so I will not respond to all of the flaws in IAE's logic. Instead, I simply note that, as my co-authors and I explained in the submission that IAE cites and related submissions (*Katz et al. DOJ Auction Comments*; Michael L. Katz, Philip A. Haile, Mark A. Israel, and Andres V. Lerner, "Comments on Appropriate Spectrum Aggregation Policy with Application to the Upcoming 600 MHz Auction," WT Docket No. 12-269, June 13, 2013 (hereinafter, *Katz et al. Spectrum Aggregation Comments*)), the implication that spectrum from different frequency bands should not receive

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46. For the same reasons that a focus on low-frequency spectrum is ill conceived, a focus on any other particular spectrum band is ill conceived: The various spectrum bands are substitute inputs for the production of mobile wireless services. Existing networks and devices do not lock providers in to particular bands because a provider that lacks ready access to spectrum in one band in a particular geographic area can substitute spectrum from another band. I understand that networks and devices support multiple spectrum bands, and all providers today can and do deploy networks and devices that support multiple spectrum bands. I also understand that AT&T's LTE devices, for example, already support four different spectrum bands and will support more in the future.⁸⁷ Thus, RWA's suggestion that the Commission focus on AT&T's acquisition of PCS spectrum is not supported by evidence or logic.

differential treatment follows from fundamental economic principles of arbitrage, which are not refuted by IAE's anecdotes from historical spectrum acquisitions under different market conditions or assertions that conclusions based on fundamental economic principles must be wrong.

IAE also claims that my co-authors and I misrepresented a quotation from T-Mobile regarding the substitutability of high and low frequency spectrum (*IAE Analysis* at 24). To the contrary, the T-Mobile quotation that we used makes precisely the points for which we relied on it – that high frequency spectrum *can* substitute for low frequency spectrum and that it may even be better than low frequency spectrum in urban areas, the one place where foreclosure concerns are even plausible. (Note that in ¶7 of the comment to which IAE refers (*Katz et al. DOJ Auction Comments*), we made the separate point that in *rural* areas, foreclosure concerns are “particularly far-fetched.”)

⁸⁷ See, e.g., Details on Moto X, available at <http://www.att.com/shop/wireless/devices/motorola/moto-x-white.html#fbid=c8a4ADuFmTv> (last visited October 6, 2013). See also, *AT&T-WCS Order*, ¶ 43.

VI. PETITIONERS PROVIDE NO BASIS TO CONCLUDE THAT CONSUMERS WILL BE HARMED IN ANY LOCAL MARKET, EITHER BY THE AGGREGATION OF SPECTRUM OR A REDUCTION IN COMPETITION

A. PETITIONERS CLAIM THAT CONSUMERS IN CERTAIN LOCAL AREAS WILL BE HARMED BY THE AGGREGATION OF SPECTRUM, BUT THERE IS NO EVIDENCE THAT SUCH HARM WILL OCCUR

47. Although Petitioners Youghiogheny Communications and Public Knowledge point to allegedly harmful spectrum aggregation in various local markets,⁸⁸ neither one discusses how this level of spectrum aggregation will harm consumers. Instead, both Petitioners incorrectly treat the triggering of the initial screen as conclusive evidence of competitive harm.⁸⁹ A closer look at the local areas demonstrates that no competitive harm will occur due to spectrum aggregation.

1. The proposed transaction leads to spectrum holdings above the screen in only a small number of areas

48. Among the 356 CMAs where Leap holds spectrum, there are very few where the combined AT&T-Leap spectrum will trigger the Commission's spectrum screen for further analysis: Only 38 Leap CMAs have at least one county that is above the threshold. Characteristics of the CMAs and counties where combined holdings exceed the threshold are shown in Appendix 1.

49. As I discuss below, there is no indication that the combined spectrum holdings of AT&T and Leap present a competitive problem.

2. In those areas where the proposed transaction leads to spectrum holdings over the screen, competitive analysis shows a lack of significant foreclosure concerns

50. As noted above, finding that spectrum holdings are above the screen does not, on its own, constitute competitive analysis. Rather, it simply indicates that such competitive analysis should

⁸⁸ See, *YC Petition* at 5-6 (discussing spectrum aggregation in the South Texas region); *Public Knowledge Petition* at 6 (citing aggregation in Carbon and McAllen, Texas and Lake Charles, Louisiana).

⁸⁹ See, e.g., *YC Petition* at 6 ("The spectrum screen should...be sounding clarion alarms that this concentration is harmful.").

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be undertaken. And the focus of the competitive analysis should be on whether the incremental spectrum added by a carrier creates a significant risk of foreclosure. I have undertaken this analysis and I conclude that, for several reasons, the spectrum being acquired by AT&T does not create significant foreclosure risk in the areas where the screen is exceeded.

(a) The over-threshold amount is small in most areas

51. The amount by which the spectrum threshold is exceeded is small in most areas. In 18 of the 38 CMAs that trigger the screen, the screen is exceeded by less than 5 MHz in all of the counties of the CMA, and in 23 of the 38 CMAs, the screen is exceeded by less than 10 MHz in all of the counties of the CMA. The Commission has approved transactions in the past that resulted in spectrum aggregation that exceeded the screen in some CMAs, based on its examination of competitive conditions in the CMAs at issue, and consistent with its use of the screen as a trigger for closer examination, not as a cap.⁹⁰

(b) The other national carriers hold spectrum in every county that exceeds the spectrum screen

52. The notion that moving slightly above the spectrum screen creates a significant risk of foreclosure is particularly far-fetched in areas where all three of the other national providers already hold significant spectrum and thus already impose a significant competitive constraint on AT&T.⁹¹ To that point, Sprint, T-Mobile, and Verizon hold spectrum in every county where the combination of AT&T and Leap triggers the spectrum screen. Sprint holds 43-114 MHz of spectrum that is counted toward the current spectrum screen in each county where the spectrum screen is triggered, except for one county in which Sprint holds 38 MHz (and these amounts exclude Sprint's substantial holdings in the 2.5 GHz bands that are not currently counted towards the spectrum screen; if included, these would increase Sprint's holdings by up to 131 MHz in the

⁹⁰ *Verizon/SpectrumCo Order*, 27 FCC Rcd at 10718-19, ¶¶ 71-72.

⁹¹ The presence of the other national carriers offsets any threat of foreclosure for several reasons. First, the other carriers themselves impose a significant competitive constraint on AT&T. Second, any attempt by AT&T to foreclose potential new entrants by acquiring spectrum would impose substantial costs on AT&T while benefitting all of the incumbent providers in the marketplace and thus would be unlikely to generate net profits for AT&T. And any attempt by AT&T to foreclose entry or expansion would require AT&T somehow to ensure that no other carrier would lease or sell spectrum to an entrant.

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counties in which it holds this additional spectrum); Verizon holds 52-119 MHz in each county; and T-Mobile holds 40-80 MHz in each county (except for three counties in which it holds 20MHz and three counties in which it holds 30 MHz). With these spectrum holdings (and considering these competitors' aggressive 4G rollout plans, for which they all appear to have sufficient spectrum capacity), and the small size of Leap in these markets overall, it is virtually certain that the national competitors have the capacity to expand to counter any anticompetitive reduction in Leap's output or increase in price.

53. Additional spectrum, beyond that currently held by other national providers, further reduces any risk of foreclosure. In all of the counties where the transaction pushes the combined entity over the screen, spectrum is held by non-national providers or entities that currently are not providing service. The total spectrum held by these entities ranges from 6-95 MHz in the counties where the spectrum screen is triggered.⁹² And further spectrum will soon be available in these counties, as the Commission has announced that its H block auction will commence in January 2014,⁹³ and that it expects to conduct its broadcast spectrum auction in 2014.⁹⁴

54. Given that a firm would only need a small subset of the total spectrum to enter or expand, the existence of all these new and forthcoming sources of spectrum should eliminate any significant concern about risk of foreclosure based on the spectrum AT&T is acquiring through the transaction.

⁹² In addition, other spectrum that is not currently included in the spectrum screen is held by non-national providers or entities not currently providing service. For example, 40 MHz of AWS-4 spectrum is held by Dish nationwide.

⁹³ *Auction of Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands Scheduled for January 14, 2014; Notice and Filing Requirements, Reserve Price, Minimum Opening Bids, Upfront Payments, and other Procedure for Auction 96*, Docket No 13-178, Public Notice, DA 13-1885 (rel. September 13, 2013).

⁹⁴ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd. 12357, 12362, ¶ 10. The Commission also indicated it may commence an auction for the AWS-3 band by September 2014, and it is required to so by February 2015 pursuant to the Middle Class Tax Relief and Job Creation Act of 2012. (See, *Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands*, Notice of Proposed Rulemaking and Order on Reconsideration, 28 FCC Rcd. 11,479, 11,488 ¶ 13 (2013).)

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(c) *There is no credible threat of foreclosure in rural areas like those where the spectrum screen is exceeded*

55. The counties where the spectrum screen is exceeded have low population densities, and, in such areas, I am not aware of any credible claims that lack of spectrum is a constraint that limits competition or risks foreclosure. In fact, in multiple previous submissions to the Commission, I (and my co-authors) have explained why spectrum is not a sufficiently scarce asset in rural areas for there to be any legitimate competitive concern about foreclosure via spectrum aggregation in such areas.⁹⁵ I am aware of no credible claim that potential competitors are being kept out of rural areas due to spectrum constraints, rather than the fact that not enough competitors are incentivized to serve such areas.

B. PETITIONERS CLAIM THAT CONSUMERS WILL BE HARMED BY DECREASED COMPETITION IN CERTAIN LOCAL AREAS, BUT THERE IS NO EVIDENCE THAT SUCH HARM WILL OCCUR

56. Youghioghenny Communications and its economic consultants, IAE, claim that the transaction will have adverse competitive effects in South Texas, asserting that Leap is “a formidable market presence” in that area. According to Youghioghenny Communications and IAE, the transaction would give AT&T an “excessive” market share in the region and “the dominant position in the prepaid submarket.”⁹⁶ In particular, Youghioghenny Communications and IAE focus on competitive effects in five South Texas CMAs: 033-San Antonio, TX; 112-Corpus Christi, TX; 128-McAllen-Edinburg-Mission, TX; 162-Brownsville-Harlingen, TX; and 281-Laredo, TX.⁹⁷ IAE also lists, in an appendix to its report, seven additional CMAs in the South Texas area.⁹⁸

⁹⁵ See, Israel and Katz Declaration on Mobile Spectrum Policies, ¶¶ 96 – 98; Israel and Katz Reply Declaration on Mobile Spectrum Policies, ¶¶ 11 – 21; Katz et al. Spectrum Aggregation Comments, ¶ 45, Katz et al. DOJ Auction Comments, ¶ 7.

⁹⁶ *YC Petition* at 2, 14-15.

⁹⁷ *IAE Analysis* at 32; *see also YC Petition* at 15 (analyzing Leap’s market share in these five CMAs).

⁹⁸ Appendix B of *IAE Analysis* lists 12 CMAs that are in or near what it considers “South Texas.” *IAE Declaration* at 31; *see also id.* at 19. The seven additional CMAs are: 170-Galveston-Texas

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57. Similarly, Greenlining Institute raises competitive concerns with respect to San Diego and California's Central Valley, where it claims Leap has a "strong presence" but offers no specifics.⁹⁹

58. Examination of the relevant data confirms that any loss of competition from Leap in these areas will not harm competition or consumers. In what follows, I explain why there are no significant competitive concerns in the CMAs highlighted by Petitioners. More detailed data on these CMAs are shown in Appendix 2.

1. **The Commission has recognized the importance of national pricing, which limits the role for market structure in any particular CMA to affect pricing in that CMA**

59. The Commission has recognized the importance of national pricing and has emphasized that national providers and others typically offer the same prices and rate plans across all areas served.¹⁰⁰ The existence of predominately national pricing reduces the relevance of localized structural conditions, such as market shares, in assessing a transaction's likely effect on prices. In examining local competitive effects one would have to give strong weight to nationwide competitive structure in addition to considering local competitive structure. And as I have shown through both of my Declarations in this matter, because Leap's network is small and the diversion ratios between the merging parties are small, there will be no significant nationwide competitive effects from the transaction, which minimizes concern in any particular CMA.

City, TX; 197-Lake Charles, LA; 300-Victoria, TX; 666-Texas 15 - Concho; 669-Texas 18 - Edwards; 670-Texas 19 - Atascosa; 671-Texas 20 - Wilson.

⁹⁹ *Greenlining Petition* at 9. According to Greenlining Institute, the Central Valley includes the following California counties: San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare, and Kern. (*Id.* at 9 n.36.) These counties comprise all or part of seven CMAs. Leap has [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]

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INFORMATION]

¹⁰⁰ See, e.g., *Verizon/SpectrumCo Order*, 27 FCC Rcd at 10718-19, ¶ 57.

60. As more evidence for the lack of nationwide competitive issues, I note that only [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION] of AT&T's subscribers are in areas currently served by Leap. Verizon, Sprint, and T-Mobile cover [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION] as many of AT&T's subscribers and would have substantially more influence on AT&T's pricing than a small competitor with limited reach, like Leap.

2. **In the CMAs highlighted by Petitioners, ample competition will remain after the proposed transaction**

61. A variety of factors bolster the conclusion that the proposed transaction would not result in harm to competition in the CMAs highlighted by Petitioners:

- In all of the five South Texas CMAs, as well as in San Diego and the Central California region, all four national competitors will be present after the transaction.¹⁰¹ As described above, the other national competitors are well poised to compete with AT&T, with sufficient spectrum to serve existing customers and expand, growing LTE networks, and strong prepaid brands. Sprint has an estimated [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION] share of subscribers in the South Texas region, which is [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION] percentage points above its national average.¹⁰²

¹⁰¹ To be consistent with my treatment of AT&T and Leap, I define presence based on a provider's having an estimated share of subscribers greater than 2%, but I note that in the South Texas CMAs, the shares of the other national competitors are never smaller than [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION] and in the California CMAs, the shares of the other national competitors are never smaller than [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION] [END AT&T HIGHLY CONFIDENTIAL INFORMATION]

¹⁰² The same broad conclusions about competition apply even considering instead all 11 Texas CMAs listed in Information Age Economics' Appendix B. (*IAE Analysis* at 31.) In those CMAs, it is still the case that Sprint is a strong competitor [BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]

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- T-Mobile has introduced the MetroPCS brand in San Diego and Fresno, California and in South Texas, injecting more competition into these markets.¹⁰³ (See Figure 2, which shows the large increase in T-Mobile/MetroPCS's share of Leap port-outs in areas recently entered by MetroPCS.)
- Leap has been weakening as a competitor, as reflected in its declining market share. As discussed above, between March 2012 and June 2013, Leap's share decreased in all of the California CMAs and in each of the five South Texas CMAs, and the decline exceeded **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]** **[END AT&T HIGHLY CONFIDENTIAL INFORMATION]** in three of the South Texas CMAs and four of the California CMAs. This decline in Leap's share implies that it will be an even less effective competitor as a standalone company in the future than it is today.

VII. CONCLUSION

62. In my initial Declaration I concluded that the proposed merger of AT&T and Leap is procompetitive and in the public interest. I have analyzed the arguments advanced by Petitioners and their economists. Petitioners make no meaningful objection to the efficiencies of the proposed merger; instead, I re-affirm my conclusion that the efficiencies described by the Applicants are standard efficiencies that are well recognized to benefit consumers. Petitioners offer no evidence that the Commission should change the product market definition on which it

[END AT&T HIGHLY CONFIDENTIAL INFORMATION] and that Leap has experienced a pronounced decline in the region. **[BEGIN AT&T HIGHLY CONFIDENTIAL INFORMATION]**

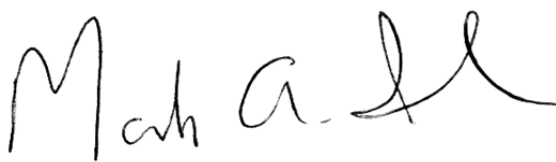
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¹⁰³

T-Mobile's announcement of new MetroPCS markets did not specify CMAs, but San Antonio, Corpus Christi, and the Rio Grande Valley in Texas were among the new markets, as were San Diego and Fresno in California. I infer that MetroPCS is now operating in all of the South Texas CMAs from several pieces of evidence. First, in my examination of the Leap porting data, which is organized around Leap markets rather than CMAs, I found that, at the time the MetroPCS rollout began, MetroPCS began attracting port-outs in areas that correspond to all five of the South Texas CMAs mentioned by IAE. In addition, the MetroPCS online store locator displays retail locations in and around zip codes that correspond to all five of the South Texas CMAs.

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has long relied, and indeed, the Commission's long-standing all-wireless market definition is affirmed by recent marketplace trends. Petitioners misunderstand the economics of product differentiation and its implications for merger analysis and misapply the Commission's spectrum screen; in both cases, they advocate standards that would harm consumers rather than benefit them. Finally, Petitioners' claims that consumers in local areas will be harmed, either by the aggregation of spectrum or the loss of a competitor are contradicted by an examination of competitive conditions in the local areas at issue. In sum, nothing in the Petitioners' filings causes me to change my fundamental conclusion that the proposed merger is pro-competitive and in the public interest.



Mark A. Israel

October 23, 2013

Date

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Appendix 1: Counties above the Spectrum Screen Threshold

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Appendix 2: Local Areas (CMAs) Raised by Petitioners

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[END AT&T HIGHLY CONFIDENTIAL INFORMATION]

DECLARATION OF ROBERT A. STRICKLAND

I, Robert A. Strickland, hereby declare the following:

1. I am Chief Technology Officer for Leap Wireless International, Inc. ("Leap"), a position I have held since February 2012. I am responsible for Leap's information technology, engineering and network operations and am also responsible for setting and managing Leap's long-term network technology strategy. I am authorized to make this declaration on behalf of Leap.

2. Approximately [BEGIN LEAP CONFIDENTIAL INFORMATION] [END LEAP CONFIDENTIAL INFORMATION] percent of Leap handsets were replaced over the last 18 months.

3. Leap is not a significant provider of roaming service, and alternative roaming providers exist across virtually all of Leap's network footprint, with the exception of some extremely small pockets. While Leap depends on other wireless carriers for roaming outside of its network footprint, relatively few carriers have customers who roam on Leap's network extensively. For example, in June 2013, only three carriers purchased more than \$5,000 per month of Leap voice roaming service, and only two carriers purchased more than \$5,000 per month of data roaming service.

4. Although NTCH, Inc. ("NTCH") roams on Leap's network [BEGIN LEAP HIGHLY CONFIDENTIAL INFORMATION]

[END LEAP HIGHLY CONFIDENTIAL INFORMATION], the amount of NTCH roaming traffic under this

arrangement is insignificant. In general, Leap does not participate in bill-and-keep roaming arrangements, except in certain instances for text message traffic or where traffic between the respective parties is symmetrical.

5. Both Verizon Wireless and Sprint have CDMA networks in the vast majority of affected areas, and according to Leap's calculations, together cover 98.3 percent of Leap's coverage footprint. According to Leap's calculations, Verizon's network overlaps 94.7 percent of Leap's network, Sprint's network overlaps 84.9 percent of Leap's network, and only 1.7 percent of Leap's network does not overlap with either.

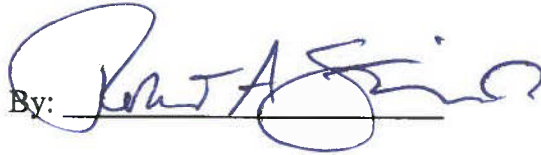
6. Youghioghenny Communications, LLC ("Youghioghenny") and its affiliates formerly provided wireless telecommunications services in South Texas under the trade name Pocket Communications ("Pocket"). In 2010, substantially all of the assets relating to the Pocket business in South Texas were contributed to a Leap-controlled joint venture in which Youghioghenny retains a 24.25 percent non-controlling membership interest.

7. The spectrum leases between Infrastructure Networks, Inc. and Leap give either party the right to terminate the usage rights for all or a portion of the spectrum thereunder at any time after November 2013 on six months' notice to the other party.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 23, 2013.

By: 

Robert A. Strickland